



Karimulink Aviation Limited v Kenya Civil Aviation Authority & 4 others (Judicial Review E095 of 2023) [2026] KEHC 5415 (KLR) (Judicial Review) (24 April 2026) (Judgment)

Neutral citation: [2026] KEHC 5415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E095 OF 2023
JM CHIGITI, J
APRIL 24, 2026**

BETWEEN

KARIMULINK AVIATION LIMITED EX PARTE APPLICANT

AND

KENYA CIVIL AVIATION AUTHORITY 1ST RESPONDENT

KENYA AIRPORTS AUTHORITY 2ND RESPONDENT

NATIONAL POLICE SERVICE 3RD RESPONDENT

MINISTRY OF DEFENCE (DOD) 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

JUDGMENT

1. The application that is before this court for determination is the one dated 4th September 2023 wherein the applicant seeks the following orders: -
 1. Certiorari to bring into this court for the purpose of quashing the 1st Respondent's illegal decision to suspend the Applicant's Air Operator Certificate No. 216 and Operations Specifications vide a letter dated 25th August, 2023.
 2. Mandamus compelling the 1st Respondent to promptly and without delay reinstate the Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL.
 3. Prohibition restraining the 1st Respondent by itself, its agents or anyone else under its instructions from engaging in any manner of disruption or obstruction of the operations



of aircraft registration number 5Y-DPL, under the guise of effecting the enforcement of the suspension communicated in the said letter dated the 25th August, 2023.

4. The costs of this application and interest thereon be provided for.
5. Any other further relief this honorable court may deem fit and just to grant in the circumstances.

The Applicants' Case

2. On 25th August, 2023, it received a notice from the 1st Respondent that effective immediately, Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL had been suspended. The director of the Applicant averred that the he companies have at no time operated illegally or otherwise without required licenses and procedures in place. He stated that he had a firm belief that he was being persecuted through the applicant by virtue of belonging to the opposition party within the Republic of Kenya. That the actions to suspend the Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL are a political witch-hand to curtail the director's political ambitions.
3. He argues that he has never been summoned by any investigative agency to aid in any form of investigations into alleged commissions nor omissions of any offence against the *Civil Aviation Act* and the rules thereunder. Further, that he is at a loss on what could have led the suspension of the impugned Air Operator Certificate by the 1st Respondent as the only allegation is that they have received information from unspecified sources to the effect that the applicant could be in violation of the *Civil Aviation Act* and rules thereunder.
4. It is the applicant's case that the unspecified allegations against the impugned companies seem fabricated, unsubstantiated, scandalous and baseless, and are a bid to unreasonably deny him his economic rights as decreed under Article 43 of *the Constitution*. That the unwarranted suspension of the Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL without a prior notice is part of an unconstitutional path that several state organs including but not limited to the Respondents have deliberately colluded to trod on and subsequently frustrate the applicants' full enjoyment of economic rights under article 43 of *the Constitution*. That the numerous bookings and employees are affected by the suspension without notice. The 1st Respondent in collaboration with other respondents herein is hell bent on throwing the applicant into unmitigated losses as the suspension was immediate and it came without any notice whatsoever. Further, that the 1st Respondent herein is working round the clock to defeat the purpose of *the Constitution* of the land, the *Fair Administrative Action Act* and other statutes to embarrass the authority therein and fulfill its own malicious and hidden agenda.
5. The Applicants' case is that the 1st Respondent's actions are in contravention of Article 2 of *the Constitution* and an outright exhibition of bad faith, malice and a well-orchestrated scheme to have the suspension of the Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL effected immediately without giving the Applicant an opportunity to mitigate the situation. Further, that all State Officers and Public Officers are obligated to comply with national values and principles of governance set out in Article 10 of *the Constitution* of Kenya 2010 whenever they inter alia interpret *the Constitution* of Kenya and apply or interpret any law. These values include the rule of law, good governance, integrity, transparency and accountability.
6. It argues that the 1st Respondent's refusal and/or failure to serve the Applicant with the notice to show cause why Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL should not be suspended is an infringement on the principles



of good governance contemplated by Article 10 of the Constitution. That Article 19 (1) and (3) of the Constitution of Kenya provides that rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the State and are subject only to limitations contemplated by the Constitution of Kenya.

7. It is further its case that the 1st Respondent's malevolent actions of deceitfully suspending Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL without issuing any notices to the Applicant is a glaring curtailment of the Applicant's right to property and right to fair administrative action and in violation of Article 19 of the Constitution of Kenya. Article 21 (1) of the Constitution of Kenya provides that it is a fundamental duty of the State and every state organ to observe, respect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.
8. It argues that the 1st Respondent's refusal and/or lack of service of the notice to show cause to the applicant is a clear infringement of Article 21 (1) of the Constitution of Kenya by the 1st Respondent who is duty bound to observe, promote and fulfill the Rights and Fundamental freedoms in the Bill of Rights. Article 24 of the Constitution of Kenya safeguards all against limitation of rights and fundamental freedoms save in a manner that is set out thereunder in particular that imposition of a duty on the State to justify any limitation of rights under any legislation failing which the limitation shall be deemed as invalid.
9. It argues further that the 1st Respondent's vengeful decision to not serve the Applicant with any prior notice of the intention to suspend Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL is limitation of the Applicant's right to property and right to fair administrative action in a manner not justified by the Constitution as envisaged under Article 24. Article 27 of the Constitution underscores the right to equality and freedom from discrimination. It further stipulates that every person is equal before the law and equality includes the full and equal enjoyment of all rights and fundamental freedoms.
10. According to the Applicant, the 1st Respondent's refusal and/or failure to avail to the Applicant a chance to avert the suspension of Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL is discriminative for reasons that it denies the Applicant the opportunity to mitigate against unforeseen losses. The command under Article 40 of the Constitution is that parliament shall not enact a law that permits the state of any person to arbitrarily deprive a person of property of any description.
11. It is concerned that 1st Respondent's vengeful actions to deceitfully suspend Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL amounts to arbitrarily depriving the Applicant their property in violation of Article 40 of the Constitution of Kenya. Article 47 of the Constitution of Kenya stipulates that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
12. According to the Applicant, the 1st Respondent's decision to suspend Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL notice amount to infringement of the Applicant's right to fair administrative action guaranteed under Article 47. The edicts of Article 232 of the Constitution of Kenya outline the values and principles of public service which include but are not limited to high standard of professional ethics, transparency and provision to the public of timely, accurate information.
13. The Applicant also argues that the 1st Respondent's notice dated the 25th of August 2023, stated that the suspension of the impugned Certificate was effective immediately yet the Applicant herein did not receive any notice of any such intended action against the companies, nor were they given a chance to



- correct any omissions that may have led to the suspension or a chance to present their case in defense of the companies.
14. It argues that it is appalling and unreasonable that the 1st Respondent's decision to suspend Air Operator Certificate No. 216 and Operations Specifications with respect to aircraft registration number 5Y-DPL is effective immediately yet the applicant were never notified of the intended suspension and not given a chance to avert the suspension.
 15. The Applicant filed submissions dated 23rd February 2026 where they identified the issues for determination and proceeded to submit on the same.
 16. On whether the Applicant is entitled to the orders sought, Counsel urged that the supremacy of *the Constitution* of Kenya is underscored under Article 2 of *the Constitution* and that the 1st Respondent's actions of failing to serve the Applicant with the notice to show cause why Air Operator Certificate No. 216 and Operations Specifications should not be suspended is in contravention of Article 2 of *the Constitution* and an outright exhibition of bad faith, malice and a well-orchestrated scheme to have the registration of the Applicant's New Life Prayer Centre & Church cancelled without giving the Applicant an opportunity to mitigate the situation.
 17. Counsel urged that all State Officers and Public Officers are obligated to comply with national values and principles of governance set out in Article 10 of *the Constitution* of Kenya 2010 whenever they inter alia interpret *the Constitution* of Kenya and apply or interpret any law. These values include the rule of law, good governance, integrity, transparency and accountability. The 1st Respondent's refusal and failure to serve the Applicant with the notice to show cause why Air Operator Certificate No. 216 and Operations Specifications should not be suspended is an infringement on the principles of good governance contemplated by Article 10 of *the Constitution*.
 18. It is the Applicants' case that amongst the rights contained in the Bill of Rights are the following;
 19. The recognition under Article 19 (1) and (3) of *the Constitution* of Kenya that, rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the State and are subject only to limitations contemplated by *the Constitution* of Kenya. The 1st Respondent's malevolent actions of deceitfully suspending Air Operator Certificate No. 216 and Operations Specifications without issuing any notices to the Applicant is a glaring curtailment of the Applicant's right to property and right to fair administrative action and in violation of Article 19 of *the Constitution* of Kenya.
 20. The command under Article 21 (1) of *the Constitution* of Kenya is that it is a fundamental duty of the State and every state organ to observe, respect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. The 1st Respondent's refusal and/or failure to and lack of service of the notice to show cause is a clear infringement of Article 21 (1) of *the Constitution* of Kenya by the 1st Respondent who is duty bound to observe, promote and fulfill the Rights and Fundamental freedoms in the Bill of Rights.
 21. The prohibition under Article 24 of *the Constitution* of Kenya against limitation of rights and fundamental freedoms save in a manner that is set out thereunder in particular that imposition of a duty on the State to justify any limitation of rights under any legislation failing which the limitation shall be deemed as invalid. The 1st Respondent's vengeful decision to not serve the Applicant with any prior notice of the intention to with the aim of fraudulently and cunningly suspending the Air Operator Certificate No. 216 and Operations Specifications is limitation of the Applicant's right to property and right to fair administrative action in a manner not justified by *the Constitution* as envisaged under Article 24.



22. Article 27 of *the Constitution* underscores the right to equality and freedom from discrimination. It further stipulates that every person is equal before the law and equality includes the full and equal enjoyment of all rights and fundamental freedoms. The 1st Respondent's refusal and/or failure to give the applicant an opportunity to defend themselves against the alleged violations is discriminative for reasons that it denies the Applicant the opportunity to enjoy their genuine economic activities and aid investigative agencies in averting violations of the laid down laws and regulations.
23. The economic rights are envisaged under Article 43 of *the Constitution* of Kenya. The 1st Respondent's flagrant attempts to maliciously and dishonestly suspend Air Operator Certificate No. 216 and Operations Specifications vide a notice dated 25th August, 2023 on allegations of unspecified violations of the Act and rules thereunder is an infringement on the Applicant's economic rights contrary to Article 43 of *the Constitution* of Kenya.
24. Further, the Applicants referred to Article 40 of *the Constitution* of Kenya, urging that the 1st Respondent's actions to suspend Air Operator Certificate No. 216 and Operations Specifications vide a notice dated 25th August, 2023 on allegations of unspecified violations of the *Civil Aviation Act* and rules thereunder amounts to arbitrarily depriving the Applicant their property in violation of Article 40 of *the Constitution* of Kenya.
25. According to the Applicants, Article 47 of *the Constitution* of Kenya further stipulates that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The 1st Respondent's impugned decision amounts to infringement of the Applicant's right to fair administrative action. Further, that the 1st Respondent did not inform the applicant when or how the 1st Respondent received the information that it has used against the applicant and there is lack of transparency and professionalism and the 1st respondent's actions are riddled with illegalities.
26. The Applicants urged that the 1st Respondent is a state office, duty bound to assist the Applicant as and when need arises with matters pertaining to the Aviation industry and its regulations. That the 1st Respondent's refusal or failure to summon the applicant to aid in investigations into possible violations of the industry's laws and regulations is worth noting as it is the regulator of the aviation industry and hitherto, the Applicant's hands are tied. 2. The 1st Respondent's notice was dated the 25th August 2023, yet the Applicant did not receive any notice of any such intended action against the companies, nor were they given a chance to correct any omissions that may have led to the suspension or a chance to present their case in defense of the said companies.
27. At the outset, it is submitted that the Respondents, in exercising its statutory mandate under the *Civil Aviation Act*, 2013, is bound not only by the enabling statute and subsidiary legislation but also by the constitutional imperatives set out in Articles 10, 47, and 50 of *the Constitution*. The suspension of an Air Operator Certificate is a decision of profound legal and economic consequence and the suspension of these instruments effectively grounds the operator's entire business. It follows, therefore, that any decision to suspend must be undertaken with scrupulous adherence to the law and with due regard to the principles of fairness and proportionality.
28. Under the *Civil Aviation Act* and the applicable Civil Aviation Regulations, the Respondent is vested with the power to suspend, revoke, or vary certificates in the interest of aviation safety. However, that power is neither absolute nor unfettered. The regulatory framework contemplates a structured process that begins with the identification of a specific breach, deficiency, or safety concern grounded in objective evidence. Upon such identification, the Authority is required, in the ordinary course, to notify the operator of the allegations, disclose the basis upon which regulatory action is contemplated,



and afford the operator a reasonable opportunity to respond to the allegations before any adverse decision is taken.

29. The Applicants' case is that the requirement for prior notice and an opportunity to be heard is not a mere procedural technicality; it is a substantive constitutional safeguard. The only recognized exception to this requirement arises in situations of demonstrable urgency, where an immediate threat to aviation safety necessitates interim action without prior hearing. Even in such exceptional circumstances, the law requires that the Authority justify the urgency of its action and thereafter accord the affected operator a prompt and meaningful opportunity to be heard. The duty to provide reasons for the decision remains intact at all times.
30. In the present case, the Applicant contends that the Respondent failed to adhere to this legally prescribed procedure. The decision to suspend the Applicant's AOC and Ops Specs was taken without adequate prior notice, without disclosure of the material allegations in sufficient detail, and without affording the Applicant an opportunity to be heard. No exceptional circumstances were demonstrated that would justify the invocation of urgent interim measures. In the absence of such justification, the Respondent's action constitutes a clear violation of the Applicant's right to fair administrative action as guaranteed under Article 47 and codified in the *Fair Administrative Action Act*.
31. Further, the impugned decision is tainted by illegality in that the Respondent acted outside the scope of its lawful authority by disregarding mandatory procedural requirements embedded in both statute and law. It is a settled principle of administrative law that where a statute prescribes a procedure for the exercise of power, that procedure must be strictly followed. Any deviation renders the resulting decision ultra vires and liable to be quashed.
32. The decision is also challenged on the ground of procedural impropriety. The failure to accord the Applicant a hearing, coupled with the absence of adequate notice and reasons, amounts to a fundamental breach of the rules of natural justice, particularly the audi alteram partem rule. Kenyan courts have consistently held that a decision arrived at in violation of these principles cannot stand, regardless of the merits of the underlying allegations.
33. The Applicant also invokes the doctrine of legitimate expectation. Having been duly certified and having operated within a regulated framework, the Applicant had a legitimate expectation that any adverse regulatory action would be preceded by fair notice, consultation, and an opportunity to be heard. This expectation arises not only from established practice but also from the legal framework governing aviation oversight. The Respondent's abrupt and unilateral action defeated this expectation and thereby violated a recognized principle of administrative justice.
34. It is therefore submitted that the cumulative effect of these deficiencies renders the Respondent's decision unlawful, unreasonable, and procedurally unfair. The decision is thus amenable to judicial review and ought to be quashed.
35. Counsel urged that the Applicant is deserving of this Courts' intervention and the orders sought. He prayed that the same be allowed with costs by virtue of section 27 of the *Civil Procedure Act*.

The 1st Respondent's Case

36. It opposes the application and asserts that the 1st Respondent is a State Corporation established under Section 4 of the *Civil Aviation Act* No. 21 of 2013 responsible for providing regulatory oversight, air navigation services and aviation training in Kenya. Further, that the court lacks jurisdiction to entertain the Application by dint of the doctrine of exhaustion. That the Application is premature as the Ex-parte Applicant has not exhausted the remedies availed in Section 69(c) of the *Civil Aviation*



Act which grants the National Civil Aviation Administrative Review Tribunal the jurisdiction to hear and determine complaints and appeals arising from the revocation, suspension or variation of licenses issued by the 1st Respondent.

37. It is the Respondents' case that the Application is fatally defective as it offends the mandatory provisions of Section 9(2) of the Fair Administrative Act No. 4 of 2015 which requires that all mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted before a matter is referred to this Honourable Court. That the Ex-parte Applicant lacks the requisite locus standi to institute the proceedings herein having failed to demonstrate sufficient interest in the matter raised in the Application. The Ex-parte Applicant has not demonstrated a nexus between itself and either Aberdair Aviation Limited, the license holder, or the impugned Air Operator Certificate and Operations Specifications for Aircraft registration number 5Y-DPL ("suit aircraft").
38. The Respondent argues that the Ex-parte Applicant sold the suit aircraft to Aberdair Aviation Limited in terms of the Aircraft Lease Agreement dated 16th January 2023. The purchase was completed through a Bill of Sale executed by the Ex-parte Applicant and Aberdair Aviation Limited on 15th August 2023, which vested in Aberdair Aviation Limited the good and merchantable title to the suit aircraft. As, at the time of instituting this Application, the Ex-parte Applicant had no relationship to the suit aircraft as to warrant an interest in the context of this dispute.
39. Aberdair Aviation Limited, through its letter referenced AA/HQSS/KCAA/2023/02 and dated 6th September 2023, formally applied to the 1st Respondent for change of ownership of the suit aircraft following the conclusion of the purchase agreement as per the Bill of Sale. The 1st Respondent after carefully considering the application, issued Aberdair Aviation Limited with a new Certificate of Registration Serial No: 0691 on 3rd October 2023, with Aberdair Aviation Limited named as the new owner of the suit aircraft.
40. The Respondent contends that the Ex-parte Applicant has not demonstrated anything to constitute a public interest to justify locus standi. Had the Ex-parte Applicant had any such locus standi, it was exhausted by the subsequent disposal of the suit aircraft.
41. The Respondent cited Article 258 of the Constitution and stated that the Ex-parte Applicant has failed to meet the threshold set by the Constitution for the institution of this Application and pray that the same is dismissed. That the 1st Respondent contends that the current dispute is not a matter of public interest; rather it arises from the 1st Respondent's exercise of its statutory mandate in relation to the suit aircraft and by extension, to Aberdair Aviation Limited.
42. The 1st Respondent issued Air Operator Certificate No. 216 to Aberdair Aviation Limited and not the Ex-parte Applicant on 2nd December 2022, which certificate expired on 27th November 2023. The certificate authorized Aberdair Aviation Limited to perform commercial air operations defined in the Operations Specifications that was subsequently issued to Aberdair Aviation Limited on 10th March 2023 and expiring on 27th November 2023, in respect of Aircraft Registration No. 5Y-DPL.
43. The 1st Respondent also granted Air Service License No. KCAA/LAS/2425 to Aberdair Aviation Limited on 22nd May 2023 to operate with effect from 18th May 2023 to 17th May 2024. Further, Aberdair Aviation Limited requested the 1st Respondent to include them as the new lessee on the Certificate of Registration of the suit aircraft. The request was considered and approved, and a Certificate of Registration Serial No. 0662 issued to the Ex-parte Applicant on 8th August 2023 with Aberdair Aviation Limited endorsed thereon as the new lessee



44. It is its position that Section 7(5) of the *Civil Aviation Act*, 2013 provides that the 1st Respondent in the discharge of its responsibility for ensuring aviation safety and security, shall co-ordinate its activities with other agencies of the Government, including the Kenya Airports Authority, the State Department of Defence and the National Police Service.
45. On 17th February 2023, the 1st Respondent received a letter from the Directorate of Criminal Investigations referenced CID/1B/SCU/SEC/4/4/1/VOL.XLV111/3 and dated 17th February 2023, requesting for information on registration particulars and details of the owner, particulars of the current and previous owner(s) including documents which facilitated transfers and any other relevant information, to facilitate their investigation into a case in which the suit aircraft was featured. The same was annexed and marked as "ENA 7"; and on the basis of the information received regarding the suit aircraft's operations and in exercise of the mandate bestowed under sections 20(2)(a) and 20(3)(f) of the *Civil Aviation Act*, 2013, through a letter referenced 2/1/2974/5Y-DPL and dated 25th August 2023, the 1st Respondent suspended with immediate effect the privileges of Air Operator Certificate No. 216 and Operations Specifications in respect of the suit aircraft to allow for conclusive investigations by the 3rd Respondent and other relevant investigative organs of Government into the matter. He annexed and marked as "ENA 8" is the Letter referenced 2/1/2974/5Y-DPL and dated 25th February 2025).
46. The Ex-parte Applicant moved this Court through Miscellaneous Judicial Review Application Number E095 of 2023: Karimulink Aviation Limited v Kenya Civil Aviation Authority & 4 Others("HCJRMISC/E095/2023") dated 28th August 2023 seeking leave to apply for Judicial Review Orders, which orders would operate as a stay of the decision of the 1st Respondent to suspend Air Operator Certificate No. 216 and Operations Specifications in respect of the suit aircraft through the letter dated 25th August 2023.
47. The Judicial Review Orders sought by the Ex-parte Applicant in HCJRMISC/E095/2023 were granted on 28th August 2023 staying the 1st Respondent's decision to suspend Air Operator Certificate No. 216 and Operations Specifications in respect of the suit aircraft through the letter dated 25th August 2023.
48. Through a letter referenced 2/1/2974/5Y-DPL and dated 29th August 2023, the 1st Respondent wrote to the Ex-parte Applicant and Aberdair Aviation Limited acknowledging receipt of the Court Order in HCJRMISC/E095/2023 and confirming the 1st Respondent's compliance with the same, thereby lifting the suspension of the Air Operator Certificate No. 216 and Operations Specifications in respect of the suit aircraft. The same was annexed and marked as "ENA 9" the Letter referenced 2/1/2974/5Y-DPL and dated 25th August 2023).
49. The 1st Respondent has remained fully compliant with the conditions for stay and the Court Order in HCJRMISC/E095/2023 is still in effect as evidenced by the approval of transfer of the suit aircraft and authorization of the suit aircraft to continue operations.
50. The Ex-parte Applicant moved this Court through High Court Commercial Case No. E500 Of 2023: Karimulink Aviation Limited v Kenya Civil Aviation Authority And Director General, Emile N. Arao("HCCOMM/E500/2023") dated 11th October 2023 claiming, among others, economic losses ostensibly occasioned to the Exparte Applicant pursuant to the suspension of the Air Operator Certificate, which supposed losses were suffered long after the suit aircraft was sold to Aberdair Aviation Limited of its own motion and evidently realizing the lack of merit in HCCOMM/E500/2023, the Ex-parte Applicant applied to the Honourable Court to have the case withdrawn. The matter was subsequently marked as closed on 9th July 2024 with costs awarded to the 1st Respondent.



51. Based on this, it is outrightly clear that the Ex-parte Applicant is shopping for fora where they think they can obtain favourable decisions, but all the while wasting the Honourable Court's precious time. the Application does not disclose a constitutional issue for consideration by this Honourable Court. The mere mention of Articles 2, 10, 19, 20, 21, 22, 24, 25, 27, 28, 40, 43, 47, 48, 50, 232, 258 and 259 does not qualify the context of the dispute between parties to be of a purely Constitutional nature.
52. Any assertion that the 1st Respondent acted in a manner that infringed on the constitutional rights of the Ex-parte Applicant or denied the Ex-parte Applicant the protection of its constitutional rights out of malice or otherwise is vehemently denied. The claim that the 1st Respondent exceeded its authority is denied.

The 1st Respondent's Submissions

53. The 1st Respondent contends that the court lacks jurisdiction to entertain the Application by dint of the doctrine of exhaustion as the Ex-parte Applicant has not exhausted the remedies availed in Section 69(c) of the *Civil Aviation Act* which grants the National Civil Aviation Administrative Review Tribunal the jurisdiction to hear and determine complaints and appeals arising from the revocation, suspension or variation of licenses issued by the 1st Respondent. Counsel cited the case of William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR) and submitted that the ex parte Applicant, in its Application, relies on the Fair Administrative Act to impugne the alleged actions of the 1st Respondent, but selectively ignores the mandatory provisions of Section 9(2) of the Fair Administrative Act No. 4 of 2015 which requires that all mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted before a matter is referred to this Honourable Court. He additionally cited the decision of the High Court, in Republic v Independent Electoral and Boundaries Commission (I.E.B.C.) Ex parte National Super Alliance (NASA) Kenya & 6 others [2017] KEHC 4663 (KLR), Soy Africa Limited v Kenya Revenue Authority & another [2023] KEHC 18842 (KLR) in this regard.
54. On Whether the ex parte Applicant has demonstrated sufficient nexus to the subject matter, Counsel submitted that the 1st Respondent argues that the ex parte Applicant has not demonstrated sufficient nexus to the subject matter. The sale of the suit aircraft executed on 16th January 2023 was completed through a Bill of Sale executed by the Exparte Applicant. Title was thus transferred to the purchaser, Aberdair Aviation Limited, the current license holder. Further, that the Ex-parte Applicant has not demonstrated anything to constitute public interest, any of which justifies locus standi, which nullifies any nexus the Ex-parte Applicant would otherwise have, as per the provisions of Article 258(1) and (2) of *the Constitution*.
55. Counsel placed reliance on the decision in Enrico Quercioli & another v Director of Public Prosecutions & 2 others; Maria Angela (Interested Parties) [2021] KEHC 4437 (KLR) and urged that the 1st Respondent contests that it lacks merit as the Ex-parte Applicant has failed to meet the threshold set by *the Constitution* for the institution of this Application and prays that the same is dismissed. Further, that the current dispute is not a matter of public interest, but rather, it arises from the 1st Respondent's execution of its mandate in relation to the suit aircraft and thus, by extension, Aberdair Aviation Limited, the current title and license holder.

The 2nd, 3rd and 5th Respondents' Case

56. The Respondents argue that the court lacks jurisdiction to entertain the application by dint of the doctrine of exhaustion. They raise another ground that the Application does not disclose any cause of



action against the 2nd, 3rd & 5th Respondents. They also ask the court to order that the 5th respondent be struck of the Proceedings.

57. In their submissions, they cited Sections 9(2) and (4) of the Fair Administrative Actions Act, No. 4 of 2015 urging that the provisions dictate that the High court ought not entertain an application for judicial review unless other available mechanisms and remedies provided under other written laws are first exhausted. The mechanism envisaged herein include the internal mechanisms for a tribunal. This is akin to the doctrine of exhaustion of remedies. It is only in exceptional circumstances, and after the applicant moves the court on the same, that the court may exempt the applicant from the requirements of section 9(2).
58. Counsel for the respondents placed reliance on Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR where the Court expressed itself on the doctrine of exhaustion. He additionally cited Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018] eKLR and submitted that the Applicant only pleaded to be exempted but did not present any evidence as to why the court should allow the prayer. He urged the Court to decline that invitation.
59. Counsel urged that the Applicant should have opted to resolving at the National Civil Aviation and Administrative Review Tribunal before moving the court for a judicial review of the decision. That the applicant's Application, filed in total disregard of Section 69 *Civil Aviation Act* 2016, is premature. Further, that Section 69(c) of the *Civil Aviation Act*, provides for the jurisdiction of the National Civil Aviation Administrative Review Tribunal on the issue of revocation of a license as the case herein. Counsel cited the decision in Republic v Kenyatta University Ex parte Ochieng Orwa Dominick & 7 others [2018] eKLR in support of these submissions.

Analysis And Determination;

60. The following are the issues for determination:
 1. Whether this court has jurisdiction to determine this suit.
 2. Whether the application has merit.

Whether this court has jurisdiction to determine this suit

61. In order for this court to determine whether this court has jurisdiction, this court has to ascertain whether or not the applicant has exhausted, the alternative dispute resolution mechanisms. In Owners of the Motor Vessel "Lilian S" v. Caltex Oil (Kenya)Ltd [1989] KLRI, the Court of Appeal Nyarangi, JA stated as follows with regard to Jurisdiction:

“...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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
62. In William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR), the High Court referred to Geoffrey



Muthiga Kabiru & 2 others – v- Samuel Munga Henry & 1756 others [2015] eKLR, where the Court of Appeal reasoned that:

“(43) It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

63. In the case of Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 others [2015] eKLR the Court of Appeal stated that: -

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be of last resort and not the first port of call the moment a storm brew... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts...These accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

64. Justice Mativo in Republic v Kenyatta University Ex parte Ochieng Orwa Dominick & 7 others [2018] eKLR held as follows:

“Section 9 (2) of the *Fair Administrative action Act* provides that the High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted. Also relevant is sub-section (3) which provides that “the High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in sub-section (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1). The use of the word shall in the above provisions is worth noting. The classification of statutes as mandatory and directory is useful in analyzing and solving the problem of what effect should be given to their directions. There is a well-known distinction between a case where the directions of the legislature are imperative and a case where they are directory. The real question in all such cases is whether a thing has been ordered by the legislature to be done and what is the consequence if it is not done. The general rule is that an absolute enactment must be obeyed or fulfilled substantially. Some rules are vital and go to the root of the matter, they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance.

It is the duty of Courts of justice to try to get at the real intention of *the Constitution* or legislation by carefully attending to the whole scope of *the Constitution* or a statute to be considered. The Supreme Court of India has pointed out on many occasions that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and



intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other.

The word "shall" when used in a statutory provision imports a form of command or mandate. It is not permissive, it is mandatory. The word shall in its ordinary meaning is a word of command which is normally given a compulsory meaning as it is intended to denote obligation. The Longman Dictionary of the English Language states that "shall" is used to express a command or exhortation or what is legally mandatory. Ordinarily the words 'shall' and 'must' are mandatory and the word 'may' is directory. A proper construction of section 9 (2) & (3) above leads to the conclusion that they are couched in mandatory terms. The only way out is the exception provided by 9 (4) which provides that:—"Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

Two requirements flow from the above sub-section. First, the applicant must demonstrate exceptional circumstances. Second, on application by the applicant, the Court may exempt the person from the obligation. The ex parte applicants counsel made a statement that there are exceptional circumstances in this case after the Court drew his attention to the above sections. He however did not provide specific cases that bring this case under the exceptions, except stating that the applicants are young which to me does not fit into the definition of "exceptional circumstances" discussed below.

It is settled that the impugned decision constitutes administrative action as defined in section 2 of the *Fair Administrative Action Act*.

Therefore, an internal remedy must be exhausted prior to Judicial Review, unless the appellant can show exceptional circumstances to exempt him from this requirement.

What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action in issue. Factors taken into account in deciding whether exceptional circumstances exist are whether the internal remedy is effective, available and adequate. An internal remedy is effective if it offers a prospect of success, and can be objectively implemented, taking into account relevant principles and values of administrative justice present in *the Constitution* and our law, and available if it can be pursued, without any obstruction, whether systemic or arising from unwarranted administrative conduct. An internal remedy is adequate if it is capable of redressing the complaint.

This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional Interpretation especially in virgin areas or where an important constitutional value is at stake. Indeed, in this case, no such argument was advanced before me nor can I discern any virgin argument touching on Constitutional interpretation.

The principle running through decided cases is that where there is an alternative remedy or where Parliament has provided a statutory appeal process, it is only in exceptional circumstances that an order for Judicial Review would be granted, and that in determining whether an exception should be made and Judicial Review granted, it is necessary for the Court to look carefully at the suitability of the appeal mechanism in the context of the



particular case and ask itself what, in the context of the internal appeal mechanism is the real issue to be determined and whether the appeal mechanism is suitable to determine it.”

65. Section 9(4) of The Fair Administrative Actions Act provides that notwithstanding the provisions of section 9(2) and (3) of the Fair Administrative Actions Act on exhaustion of available alternative remedies, the High Court or the Subordinate Court may in exceptional circumstances and on application by the applicant exempt such a person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
66. This Section is very clear that a party who seeks to be exempted must make an application to the court. It is categorical that the High Court may in exceptional circumstances and on application by the applicant exempt such a person the applicants did not make an application for exemption and section 9(4) of the *fair administrative action act*. The Act uses the word “and” which means there are two conditions that an applicant for exemption of the application of the doctrine of exhaustion must fulfill. There is justification and a rationale for the requirement for an application to be made for leave to be exempted by the court before the exemption can be granted.
67. The reason behind having this requirement is for properties of ensuring that article 159 of *the constitution* is promoted. In the instant case, the applicants are clear, that there were alternative dispute resolution mechanisms.
68. It is my finding and I so hold that the court lacks jurisdiction to entertain the Application by dint of the doctrine of exhaustion as the Ex-parte Applicant has not exhausted the remedies availed in Section 69(c) of the *Civil Aviation Act* which grants the National Civil Aviation Administrative Review Tribunal the jurisdiction to hear and determine complaints and appeals arising from the revocation, suspension or variation of licenses issued by the 1st Respondent. Having found that the applicant did not exhaust the doctrine of exhaustion. Ultimately this takes away this courts power.
69. As such the other issues cannot be determined with given that the court lacks jurisdiction and I so hold. In the Supreme Court Case of Dickson Ngigi Ngugi v Commissioner of Lands S.C Petition No. 9 of 2019 [2019/ eKLR, /36) wherein it was observed that,

“Jurisdiction goes to the root of any cause or dispute before a court of law. A court must exercise restraint to avoid overstepping its constitutional role in order to maintain its legitimacy. If a court has no jurisdiction, a judgment rendered therein does not adjudicate the dispute. It does not bind the parties, nor can it be made the foundation of any right. It is a nullity without life or authority. In short, it is coram non judice and amounts to a nullity because, as Nyarangi, JA famously said in the locus classicus, Owners of the Motor Vessel “Lillian S” Caltex Oil, (Kenya) Ltd [1989] KLR 1, “jurisdiction is everything. Without it, a court has no power to make one more step”.

Costs;

70. In Joseph Oduor Anode v. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record.



In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

71. The Applicant shall shoulder costs of the suit.

Determination:

72. The court lacks jurisdiction to hear and determine the suit.

Order:

The suit is struck out with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN ELDORET THIS 24TH APRIL 2026.

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J. CHIGITI (SC)

JUDGE

