

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**JUDICIAL REVIEW NO. E015 OF 2025**  
**IN THE MATTER OF ARTICLE 22, 23, 27, 28, 40, 47, 165, 174, 209**  
**AND 210 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE FISHERIES MANAGEMENT AND  
DEVELOPMENT ACT AND REGULATIONS**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT**

**BETWEEN**

**REPUBLIC .....**

**APPLICANT**

**=VERSUS=**

**COUNTY GOVERNMENT OF UASIN GISHU .....**

**RESPONDENT**

**Coram: Justice R. Nyakundi**  
**M/S AK Advocates LLP**

**JUDGMENT**

1. Before this Court for determination is a notice of motion under Certificate of urgency dated 2<sup>nd</sup> day of July 2025 expressed to have been brought under Articles 22, 23, 47, 174, 209, 210 and 232 of the Constitution of Kenya 2010, Order 53 Rule 3(1) of the Civil Procedure Rule 2010 and Section 7 and 9 of the Fair Administrative Actions Act) where the Applicant is seeking for the following orders:

*(a) Spent.*

*(b) That leave so granted to institute this Judicial Review proceedings operate as stay and/or orders of prohibition restraining the Respondent, its agents, employees and servants from interfering with the exparte applicant business*

*by arresting its employees, servants, agents and/or seizing its equipments used in the trade pending the hearing and determination of this application.*

- (c) That interim orders be and are hereby issued directing the Respondent, its employees, servants and agents to release to the exparte applicant business premise on the 17/6/2025 pending the interparties hearing of the application.*
- (d) That interim orders be and are hereby issued directing the Respondent, its employees, servants and agents to release to the exparte applicant the two fridges and other tools of business seized by the respondent, its employees and/or servants during the raid on the exparte applicant business premise on the 17/6/2025 pending the hearing and determination of this application.*
- (e) THAT the Honorable court be pleased to make a declaration that the exparte applicant is duly licensed to sale, trade and deal in fish and fish products within Uasin Gishu County.*
- (f) A declaration that the respondent decision and/or actions of requiring the exparte applicant to obtain a business permit for selling and/or dealing in fish and/or fish products despite the exparte applicant having been issued with trade license to sale fish and fish products is unlawful, illegal and amounts to double taxation.*
- (g) An order of certiorari to bring into this court and quash the respondent decision requiring the exparte applicant to pay for and obtain a further single business permit for selling fish prior to prior to continuing with its fish business despite being licensed to sale fish and/or fish products.*
- (h) In the alternative to prayer (7) hereinabove, the respondent, its employees, servants, agents and/or relevant department be compelled to issue the exparte applicant with a valid business permit to deal in fish and/or fish products*

*immediately and/or within a specified upon the conclusion of this mater.*

- (i) Unconditional orders directing the respondent, its servants, employees and/or agents to release to the exparte applicant the two fridges and other tools of business seized during the respondent, its employees and/or servants raid on the exparte applicant business premise on the 17/6/2025.*
- (j) Structural interdicts orders to confirm compliance with the court orders.*
- (k) Orders of prohibition restraining the respondent, its employees and agents from interfering with the exparte applicant fish business either by arresting of the exparte applicant employees and servants and/or seizing the exparte applicant tools of trade.*
- (l) Costs of this suit.*
- (m) Such further and other reliefs that the honorable court may deem fit to grant.*

2. Which application is based on the following grounds:

- (a) That the exparte applicant is duly licensed to sale fish and fish products within Uasin Gishu County pursuant to regulation 14 of the Fisheries Management and Development (Inland Fisheries) Regulations.
- (b) Despite the exparte applicant being licensed to sale fish and fish products within Uasin Gishu County, the respondent, its employees, county inspectorate, servants and/or agents on the 17/06/2025 closed the exparte applicant fish shop situate at Plot No. 12/18 in Pioneer Estate in Eldoret Town and further seized and/or confiscated the exparte applicant tools of trade for reasons that the exparte applicant lack a business permit issued by the County Government to engage in the trade.
- (c) The exparte applicant employees who were at the business premise at the time of the raid by the respondent, its agents, servants and

employees were equally arrested, detained in county cells and subsequently police cells and thereafter released without any charges having been proffered against them. To date, no charges have been instituted against the exparte applicant and/or its employees regarding the raid at their shop on 17/6/2025.

- (d) That despite no criminal charge having been proffered against the exparte applicant, its directors and employees who were arrested, the 1<sup>st</sup> respondent have declined, failed and/or neglected to release the exparte applicant tools of business that were seized during their unlawful raid at the exparte applicant shop on the 17/6/2025 without any lawful justification.
- (e) Further, the respondent has not provided any written reasons for the continued detention of the exparte applicant goods and/or keeping the same in its custody.
- (f) The respondent actions thus amount to unlawful deprivation of property without any just cause and contrary to the tenets of article 40 of the Constitution of Kenya 2010.
- (g) As a result of the respondent unlawful actions, the exparte applicant has been put out of business without any justification hence occasioning it greater losses and harm.
- (h) The exparte applicant has thus been left at the mercy of the respondent, its employees and servants to conduct its fish business despite the exparte applicant being licensed to engage in the trade.
- (i) That the decision by the respondent requiring the exparte applicant to obtain business permit for selling fish prior to continuing with its fish business despite the exparte applicant being issued with the license to sale fish and fish products in Uasin Gishu County is thus ultra vires for the following reasons;
  - i. The decision was made in bad faith and in total abuse of power.

- ii. The decision is not rationally connected to the purpose for which it was taken and/or the empowering provision.
  - iii. The decision was taken with ulterior motive to prejudice the rights of the exparte applicant
  - iv. The respondent was not authorized by any law to make the decision.
  - v. The decision was procedurally unfair and was biased.
  - vi. The exparte applicant was not given notice to state his case.
  - vii. The respondent failed to take into account relevant considerations.
  - viii. The respondent acted in excess of power conferred under the law.
- (j) That further, decision by the respondent requiring the exparte applicant to pay for and obtain a business permit prior to continuing with the fish business for which it is licensed to do amounts to double taxation as the exparte applicant has fish trading license authorizing it to sale fish within Uasin Gishu County.
- (k) That the decision should thus be brought into this court for purposes of being quashed.
- (l) That unless the orders sought are granted, the exparte applicant shall thus suffer irreparable harm and losses that cannot be remedied by an award of damages.
- (m) Further, the exparte applicant has many employees who will be put out of employment and risk losing their livelihood due to the respondent unlawful actions.
- (n) That it is thus proper and in the interest of justice that the application be granted to protect the rights of all parties to the suit.
- (o) That no prejudice shall be suffered by the respondent if the orders sought are granted as they shall be granted an opportunity of being heard on this matter.

- (p) That the court is vested with powers to grant the orders sought.
- (q) That I thus pray that the application be allowed.
3. In response to the application is a replying affidavit sworn by Felix Kimaru who deponed as follows:
- (a) That he is the Chief Officer in Trade, investment, industrialization and Tourism of the Respondent herein and therefore conversant with the facts in this matter and therefore competent to make and swear this affidavit.
- (b) That he has read, understood and where necessary been explained to be their Advocates on record the contents of the Judicial Review application dated 2<sup>nd</sup> July 2025 together with the supporting documents to which responds as hereunder:
- (c) That from the outset, the application is bereft of merit and a futile attempt at trying to use this Honourable Court's process to undertake an illegality and undermine the work of the Respondent.
- (d) That the Respondent is duly established as a County Government under the Constitution of Kenya 2010 and the provisions of the County Government Act, 2012.
- (e) That I wish to state that the Respondent is mandated to issue licenses and permits for businesses being one of its statutory duties provided by the Constitution of Kenya, 2010 under Article 209 as read with Article 210(1) which permit County governments to levy property tax, entertainment tax as well as charges for services they provide.
- (f) That further to the above, the County Governments Act. 2012, the Uasin Gishu County Finance Act, and the Trade Licensing Regulations, the Respondent is duly mandated to regulate, issue, and enforce business permits within its jurisdiction.
- (g) That the enforcement measures taken against the Ex-Parte Applicant herein were exercised strictly within the lawful authority of the County Government, in the discharge of its statutory duty to ensure compliance with licensing and public.

- (h) That the Ex-Parte Applicant, herein was issued with a business permit under the category of Groceries. Code 110, upon payment of the requisite license fee of Kshs. 6,000 in accordance with the Uasin Gishu County Finance Act.
- (i) That despite the nature and limitations of the said permit, all of which were within their knowledge, the Ex-Parte Applicant engaged in operations falling under a different classification, namely Medium Cold Storage Facility, Code 345, which involves the handling and sale of fresh fish requiring a higher license fee of Kshs. 23,350/=.
- (j) That the Ex-Parte Applicant's conduct amounted to a material breach of permit conditions and contravened the County's Trade and Licensing regulations.
- (k) That consequently, enforcement action was lawfully undertaken by officers from the Department, which included confiscation of tools of trade, specifically two refrigerators containing fish products.
- (l) That the said items remain safely stored and in the custody of the County Government of Uasin Gishu, pending further directions.
- (m) That I verily believe the enforcement measures taken were procedural, lawful, and necessary to ensure compliance with licensing regulations and to protect public health standards.
- (n) That what the Ex-Parte Applicant is seeking in the instant application is tantamount to having the Court interfere with the independent workings of the Respondent and undermine its efforts in ensuring lawfulness prevails within the County. Suffice to say the Court cannot aid such an endeavor.
- (o) That further the circumstances of the instance suit do not warrant the issuance of the Orders sought. This is in the background of the fact that the Ex-Parte Applicant has approached this court for a myriad of orders in a futile attempt at undermining the Respondent's authority.
- (p) That the Ex-parte Applicant intends to damage the Respondent's reputation and image to the public it serves, by dragging its name

in the mud. This is in the background of the fact that the Respondent is having to expend resources to defend this suit, which resources could have been utilized for the public good.

(q) That it is imperative to note that the Ex-Parte Applicant did not explore the Respondent's internal mechanisms in resolving his predicament and rushed to court with misdirected averments; which plays into the rhetoric they want this Court to fall for.

(r) That I therefore pray that this Honourable Court be pleased to:

- a. Dismiss the Applicant's application with costs; and
- b. Uphold and affirm the enforcement action of the County Government of Uasin Gishu as lawful, proper, and in full conformity with its statutory mandate.

4. This judicial review application was directed to be canvassed by way of written submissions on the interlocking issues. In the first instance, the Applicant in his written submissions dated 10<sup>th</sup> November 2025 contended that the Respondent Uasin Gishu County Government had all along issued him with the License to engage with the business of selling fish in Plot No. 12/18 Pioneer Estate in Eldoret Town. However, despite being Licensed to sell fish and other fish products the Respondent had issued the Applicant with a single business permit having a wrong coding which shows the Applicant was Licensed to sell groceries. It was further the submission by the exparte Applicant that the issues were raised with the Respondent's employees or servants but no amicable solution was reached save that the aforesaid shop situated at Plot No. 12/18 Pioneer Estate was closed down and two refrigerators and fish were chatted away without justifiable cause. These equipments remain under the custody of the Respondent and no reasons are yet to be issued occasioning the exparte Applicant loss of income and profits. The exparte Applicant urged the Court in his submissions to be guided by Schedule 4 of the Constitution of Kenya 2010, Article 47 of the Constitution on the right to fair administrative action, Article 22(1) & 23 of the same Constitution. In buttressing

violation of his rights the ex parte Applicant also placed reliance on the following case laws: *Republic v Kisii County Assembly & 4 Others Ex parte John Aboko Kumenda & Another; Kisii County Secretary & 2 Others (Interested Parties) [2021] eKLR*, *Republic v Chief Magistrate's Court at Milimani Law Courts; Director of Public Prosecutions & 2 Others (Interested Parties); Ex-parte Applicant: Pravin Galot [2020] eKLR*, *Section 23 of the Uasin Gishu County Inspectorate Service Act No. 2 of 2022, Kimani v Director of Public Prosecution & 3 Others (Judicial Review Application E062 of 2023) [2024] eKLR*, *Republic v Cabinet Secretary, Ministry of Lands & Physical Planning & 2 Others; Gerevasio Mugao Nyaga (Interested Party) Exparte; Joseph Mutemi Nkuno & Another [2021] eKLR*, *Republic v County Government of Nyandarua; County Assembly of Nyandarua (Interested Party), Nyandarua Recreational & Entertainment Self Help Group & 12 Others (Ex-parte) [2019] KLR & Republic v Jomo Kenyatta University of Agriculture and Technology Ex Parte Elijah Kamau Mwangi [2021] eKLR*.

According to the learned Counsel for the ex parte Applicant, there is need to grant the declarations as prayed for in the notice of motion dated 2/7/2025.

5. Whereas on the part of the Respondent a position was taken that the enforcement measures taken were exercised strictly within the County Governments Act 2012, the Uasin Gishu County Finance Act and the Trade Licensing Regulations. It was learned Counsel's contention that the Respondent in closing down the business premises the necessity of it arose because the Ex parte Applicant was engaged in operations falling under a different classification, namely Medium Cold Storage Facility, code 345 which involves handling and sale of fresh fish, requiring a higher license fee of Kshs 23,350/=.
6. In seeking leave of this Court to have the petition dismissed for want of merit, Learned Counsel for the Respondent cited and relied on the following cases and their attendant principles: *Republic v County*

*Government of Kiambu ex parte Robert Gakuru & Another [2018] eKLR, Pastoli v Kabale District Local Government Council & Others [2008], Speaker of National Assembly v Karume [1992] KLR 21 and reaffirmed in Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others [2015] eKLR, Giella vs Cassman Brown Co. Ltd [1973] EA 358, Mrao Ltd. vs First America Bank of Kenya and 2 Others [2003] eKLR 125, Halsbury's Laws of England, Third Edition, Volume 21 Paragraph 739, page 352, Kenya Power & Lighting Co. Ltd v Sheriff Molana Habib [2018] KLR.*

7. It is from this background the Respondent urged the Court to find that all actions taken as against the exparte Applicant were within the provisions of the law which regulate trade practices within the County as provided for under the County Government Act, Public finance Management Act and Uasin Gishu County Finance Act. It is on this basis according to the Respondent's learned Counsel that the enforcement Officers acted pursuant to these legal provisions to ensure compliance. Confiscation of the Applicant's tools of trade being the two fridges used for fish storage was therefore a lawful regulatory action undertaken within the Respondent's statutory powers.
8. This petition shall be interpreted and construed within the threshold of the affidavit evidence and submissions from both Counsels providing the legal perspectives.

### **Analysis and Decision**

9. The Applicant's view is that the decision by the Respondent to close the business premises and go further to seize the refrigerators and such tools of trade promoting and selling fish and other fish products was tainted with illegality, impropriety and unreasonableness. For this Court to answer that question whether that is true, the settled sample case law which gives principle guidelines for the exercise of discretion by a judicial review Court is of fundamental importance.

10. The Court in **Pastoli v Kabale District Local Government Council & Others [2008] 2 EA 300** it was held on this subject as follows:

*“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 making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instance 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 in the defiance of logic and acceptance moral standards ... procedural impropriety is when there is 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 fail to act with procedural fairness towards one to the affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in statute or legislature instrument by which such authority exercises jurisdiction to make a decision.”*

11. In the present application the Applicant has asked the Court to set aside the order made by the Respondent for being in violation of Article 22, 23, 27, 28, 40, 47, 165, 174, 209 and 210 of the Constitution of Kenya 2010. The judicial Review jurisdiction is not about absoluteness of the discretion nor the legal authority of exercising it that matters on the part of the public body, person or institution but it is whether in its, him or her exercising that authority under the law some of the person’s legal rights or interests have been affected. That is how in law that exercise of discretion becomes justiciable and therefore subject to judicial review. The law on Judicial

Review is now well settled as what grounds must be interpreted and construed upon which an administrative action can be subject to control by Judicial Review conferred upon the High Court. This is what Lord Diplock's classic dictum in council of **Civil Service Unions v Minister for the Civil Service [1985] A.C. 374, 410** addressed as follows:

*"My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality, " the second "irrationality" and the third "procedural impropriety, " That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.*

*By "illegality" as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.*

*By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB. 223).*

*It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.*

12. The High Court going by this dicta exercised judicial review to issue writs of certiorari and prohibition to control judicial, quasi-judicial of administrative authorities acting without jurisdiction or against natural justice. From a comparative perspective the Courts whom we share the common law heritage from the Far East in the Republic of India its progressive jurisprudence aligns well with our Kenyan legal system as demonstrated by the following cases:

*T.C Basappa v T. Nagappa (1985): Laid down that certiorari is issued to correct errors of jurisdiction, where a tribunal acts in excess of jurisdiction or fails to exercise it. Hari Vishnu Kamath v Syed Ahmad Ishaque (1954): Established the distinction between the writ of prohibition and certiorari, emphasizing that certiorari is a quash decisions, while prohibition prevents them. State of Uttar Pradesh vs Mohammad Nooh (1975): Discussed the principles governing the issue of writ of certiorari, particularly in relation to the alternative remedy of appeal. Rupa Ashok Hurra vs Ashok Hurra & Anor (2002): Affirmed the power of the Supreme Court to issue writs of certiorari, prohibition and*

*certiorari (under Article 32) to enforce fundamental rights. Parry & Co. V Commercial Employees' Association (1952): Clarified the scope of judicial review over inferior tribunals. Ibrahim Aboobaker vs custodian General (1952): Addressed the conditions under which a writ of certiorari can be issued.*

13. This Court granted leave to the ex parte Applicant for purposes of making the prerequisite application for the substantive orders and this was done because he demonstrated sufficient interest in the matter.
14. *The order of judicial review is only available where an issue of 'public law' is involved but the expressions 'public law' and 'private law' are recent immigrants and whilst convenient for descriptive purposes must be used with caution, since the English Law traditionally fastens not so much upon principles as upon remedies. On the other hand, to concentrate upon remedies would in the present context involve a degree of circuitry or levitation by traction applied to shoestrings, since the remedy of certiorari might well be available if the health authority is in breach of a 'public law' obligation but would not be if it is only in breach of a 'private law' obligation. See R v East Berkshire Health Authority ex parte Walsh [1984] 3 WLR 818; Davy v Spelthorne Orough Council [1934] 3 All ER 278; 1934 AC 262. The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court. See Chief Constable of the North Wales Police v Evans [1982] 1 WLR 1155.*
15. The constitutional imperative of fair trial rights often encapsulated within the broader concepts of procedural fairness and due process serves as a crucial check on the power of public bodies to ensure they do not arbitrarily deprive citizens of their rights or property. In judicial review, this imperative requires public authorities to act legally, rationally, and procedurally fair, especially when their decisions affect individual rights.

16. The view I take of this application from the lens of the Constitution is that in the reply by the Respondent I have not seen concrete evidence that there was compliance with Article 47 on fair administrative action while initiating to exercise authority and powers allegedly conferred by the County Government Act 2012, the Uasin Gishu County Finance Act and the Trade Licensing Regulations which provisions were invoke to demolish the business premises owned by the exparte Applicant for selling fish at Plot No. 12/18 Pioneer Estate in Eldoret Town. The necessity of notice before the impugned decision was carried out by the Respondent in law is indispensable. This is the drafters of the Constitution enacted for the Kenyan people to apply in every decision making when dealing with the rights of their fellow citizens under the aforesaid Article 47 and I quote: "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. This decision which was made by the Respondent involved demolishing structures in a business premises in which the Applicant had been licensed by the Respondent the business of selling fish and other fish products. There is a presumption that the licensing body which the County Government in this case before issuing any particular business license must go through the checklist by visiting the locus in quo to establish the environment, the fiscal facilities, the hardware and the software likely to be used in the business operations and management by the person applying to be licensed and the nature of classification of the license to the issued by the Respondent. Given the constitutional imperative of the paramountcy of the clauses on human rights it is perfectly clear that every public institution or organ of State or State Officers must observe human rights when it comes to making decisions which affect the rights of their fellow citizens.

17. In the case at bar in which the Respondent - County Government has relied on the legislative and regulatory framework to dismiss the

petition by the Applicant certain questions are pertinent if indeed the exercise of its or their power was in consonant with the Constitution.

- a) *Where does the power to make this decision come from?*
- b) *If you are an administrator within a County system: Is the power you are exercising really one that comes within the functions of counties under the Constitution? Or if you are at the national level, is this a national function?*
- c) *For what purposes can the power be exercised?*
- d) *Who will be negatively affected by the decision or action?*
- e) *Is it possible that the negative effect will be a breach of one or more rights recognised by Chapter Four of the Constitution?*
- f) *If so, does the law under which we propose to act provide for a limitation of the right(s) in the situation?*
- g) *Am I the right person, or is this the right body, to make the decision?*
- h) *Is there any reason why my taking the action might give an impression of bias?*

**As I/we prepare to take the decision or action:**

- i) *When should I act to ensure I am acting expeditiously but not prematurely?*
- j) *What information do I need before I can take action?*
- k) *Do I have that necessary information?*
- l) *Am I satisfied about any factual matters?*
- m) *Am I reasonable in being satisfied?*
- n) *Are there any other conditions to be satisfied before I act, and have they been satisfied?*
- o) *What procedures does the law require for taking this action?*
- p) *What factors does the law say I should consider when making the decision?*
- q) *Is there a legitimate policy/practice about how decisions are to be made?*

- r) *Does anyone have a legitimate expectation as to how the power will be exercised?*
- s) *Have I reached out to those who will be specifically affected giving them enough notice of the decision that may be taken, so they have a fair chance to put their views and concerns?*
- t) *Have I done the same to the public if they will be affected?*
- u) *Have I carried out any necessary public participation?*
- v) *Was that consultation/participation meaningful in terms of the provision of necessary information, adequate notice and time? (See Katiba Institute.org 2022/01 - Fair Administrative Action Book).*

18. There is crystal clear evidence in this judicial review matter. There are certain rights entitled and are in favour of the exparte Applicant which were limited by the Respondents in in the decision making process which ultimately impaired his economic rights. Article 24 of the Constitution provides inter alia, that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking to account all relevant factors including the nature of the right, the importance of the purpose of the limitation and the nature and the extent of the limitation. The thrust of the Respondent's position that no specific right of the Applicant was infringed by the demolition of his business premises in which he carried out the sale of fish and other fish products. The Respondent further submitted that the County Government Act, the Finance Act, the Trade Regulations do apply to the Applicants and he was the one who had violated the law by acquiring a license of his premises under the wrong classification. What the Court is being told here is that any limitation of a right to procedural fairness which may have been occasioned to the Applicant is justifiable under Article 24 of the Constitution.

19. It is important at the outset to explain that Article 50 on fair trial rights cannot be derogated from by any public body, State Officer, organ under the umbrella that a particular legislation conferred powers to terminate any such business operations which were being regulated by the Council that under non-disclosure material facts by the Applicant. Unfortunately for the Respondents the fair Administrative Action Act 2015 premised in Article 47 of the Constitution and the right a fair hearing in Article 50 of the same Constitution requires procedural fairness not only in the event of a breach of a right but whenever administrative action materially and adversely affects a right or legitimate expectation of any person. This distinction is significant on the facts of this case taking the phrase materially and adversely affects simply to mean that the decision taken by the Respondent significantly had a higher effect on the rights of the Applicant. The key question which the Respondent did not even address is whether any rights of the Applicant had been affected by the demolition of his business premises. The Respondents principally relied on the provisions of the applicable Statutes which confers them with certain authority to make decisions against trade practices and regulations within the County. The real issue is whether the broader constitutional relationship that exist between a public service provider and the members of the local community gives rise to rights that require application of Article 47 and 50 of the Constitution. The answer to me is in the affirmative. In my view, proper regard to the import of the right to the administrative justice in our constitutional democracy confirms the need for an interpretation of the rights under the Fair Administrative of Action Act and the right to a fair hearing or an opportunity for one to be heard and challenge a decision within that administrative forum.

20. In respect of this case, the following principles on procedural fairness are particularly relevant and were never addressed by the Respondent

in answer to the threat, infringement and violations which were visited upon the applicant. Thus:

- a) Services must be provided partially, fairly, equitably and without bias.
  - b) People's needs within Uasin Gishu County must be respondent to and the public must be encouraged to participate in the decision making process before the final judgment is pronounced by the public body, person, servant or employee of the County Government.
  - c) The County Government as an organ of the Constitution in their policy making decisions must be accountable to the people.
  - d) It is also of fundamental importance that County Government as organs of devolution in the Constitution must not forget the provisions of Article 10 on the value of transparency which must before start by providing the public with timely, accessible and accurate information specifically on matters affecting their fundamental rights and freedoms under Chapter 4 of the Constitution and also the economic, social and cultural rights.
21. In the entire spectrum or scope of the evidence by the Respondent, it is clear and plain that no evidence has been tendered before this Court on notice issued to the Applicant that is property referenced Plot No. 12/18 in Pioneer Estate in Eldoret Town in which his fish shop and other fish products is located was under a threat of being confiscated and his tools of trade seized and attached. Taken together the values and principles described in Article 10 of the Constitution which require State Officers to act in a manner that is responsive, respectful and fair when fulfilling their constitutional and statutory obligations fell short of the Constitutional and statutory threshold and no mitigation placed before this Court by the Respondents can acquit it of any violations against the Applicant. This administrative action by the Respondent is subject for review within the provisions of Section 7 of the Fair Administrative Action Act which provides as follows:

(1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to- (a) a court in accordance with section 8; or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law. (2) A court or tribunal under subsection (1) may review an administrative action or decision, if- (a) the person who made the decision- (i) was not authorized to do so by the empowering provision; ii) acted in excess of jurisdiction or power conferred under any written law; (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation; (iv) was biased or may reasonably be suspected of bias; or (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case; (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with; (c) the action or decision was procedurally unfair; (d) the action or decision was materially influenced by an error of law; (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant; (f) the administrator failed to take into account relevant considerations; (g) the administrator acted on the direction of a person or body not authorized or empowered by any written law to give such directions; (h) the administrative action or decision was made in bad faith; (i) the administrative action or decision is not rationally connected to- (i) the purpose for which it was taken; (ii) the purpose of the empowering provision; (iii) the information before the administrator; or (iv) the reasons given for it by the administrator; (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law; (k) the administrative action or decision is unreasonable; (l) the administrative action or decision is not

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

22. This petition falls within the general interpretation of the Constitution so as to give to the Applicant the full measure of the fundamental rights and freedoms which are enshrined in the supreme law of this Republic. The constitutional Court of South Africa in **S v Mhlungu 1995 (3) SA 39** in which the Court remarked as follows:

*A constitution is an organic instrument. Although it is enacted in the form of a statute it is sui generis. It must broadly liberally and purposively be interpreted so as to avoid [what Lord Wilberforce called] 'the austerity of tabulated legalism' and so as to enable it to continue to play a creative and dynamic role in the expression and the achievement of the deals and aspirations of the nation, in the articulation of the values bonding its people and in disciplining its government.*

23. The Court also in **S v Makwanyane 1995 (3) SA 391** opined itself as follows:

*[The Charter [of Rights and Freedoms] is not the product of a few individual public servants, however distinguished, but of a multiplicity of individuals who played major roles in the negotiating, drafting and adoption of the Charter. How can one say with any confidence that within this enormous multiplicity of actors .... the comments of a few federal civil servants can in any way be determinative.*

24. In our jurisdiction the Court in **Lemeiguran & 3 Others vs Attorney General & 2 Others [2008] eKLR (EP) 325** held inter alia:

*“A generous and purposive interpretation is to be given to constitutional provisions protecting human rights while carefully considering the language used in the Constitution. The court had a responsibility to interpret the Constitution in a manner that protected and enhanced the right of minorities and other disadvantaged group.*

25. The question as to whether the statutory provisions in County Governments Act, 2012, the Uasin Gishu County Finance Act, and the Trade Licensing Regulations and their general application were unfairly applied targeting the Applicant in demolishing his business premises on the grounds that he was operating that particular business of selling fish and other fish products on a mistaken license permit than that one allowed by law, my answer is in the affirmative. The enquiry in this scenario is as tabulated in paragraph 17 of this judgment. If this was basically a question of the class of license recognized by law to apply to the business premises of the Applicant, why demolish without notice and even go further to attach and seize the refrigerators or cold rooms being tools of trade acquired by the Applicant to facilitate securing of his economic rights.
26. The High Court of Kenya and superior courts have extensively developed the doctrine of legitimate expectation, particularly under Article 47 of the Constitution and the Fair Administrative Action Act, 2015. It dictates that public authorities must act consistently and fairly, keeping promises or maintaining practices that have created a reasonable expectation in an individual, provided such expectation is not illegal.
27. The Applicant to this petition had a legitimate expectation in the renewal process so that a proper License can be issued followed with due process as laid down in the provisions of the Statutes and regulations being relied upon by the Respondent. The Respondent cannot violate its own procedures to the detriment of the Applicant who also happen to be a resident of Uasin Gishu County. In the Case

of **Odongo v Council for Legal Education & Another (Petition - Kenya Law [2023] KEHC 17592** the Court noted that a legitimate expectation must not be ultra vires that is beyond legal powers. The representation must be one the administrator can legally act upon; legality takes precedence over certainty. Similarly, in Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 1(1) at page 151 legitimate expectation is described as follows:

*"A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by authority, including an implied representation, or from consistent past practice".*

28. What do I perceive as a legitimate expectation which arises from the relationship between the Applicant and the Respondent? There is no dispute that the Applicant had obtained trading licenses from the Respondent to deal with fish and related fish products. The location of the business was well known to the Respondent. However, during the routine inspection by the Respondent, it was discovered that the class of the trade license applied for by the Applicant was of a different category than the one which could have been more legitimate in terms of their classification in the Trade Licensing Regulations. The legitimate expectation therefore for the Applicant was that the Respondents who are responsible for taking a decision on such matters would ensure that he would receive and retain a benefit of advantage in so far as his business is concerned. In my considered view, the decision to demolish the business premises and carry away the refrigerators and cold rooms was in the realm of remoteness.
29. The High Court of Kenya frequently handles judicial review applications for grant of prerogative writs within the branch of law on judicial review jurisdiction. One such remedy is certiorari which is used to quash decisions made by public bodies, tribunals or authorities that

are procedurally unfair, illegal or irrational. The prerogative writs have been articulated in the Court of Appeal decision in **Kenya National Examinations Council vs Republic Ex parte Geoffrey Gatheni Njoroge & Others Civil Appeal No. 266 of 1996 [1997] eKLR** in which the Court held *inter alia*:

*“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 there is a specific legal right or 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. The order must command no more than the party against whom the application 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, leaves discretion as 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... These principles mean that an order of mandamus compel the performance of a public duty which is imposed on a person or body of 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."*

30. This Court has to strike a delicate balance in this case as between the work of the Respondent in regulating orderliness of business in Uasin Gishu County more so Eldoret City and to inhabit citizens who act in contravention of the statutory and regulatory framework in securing licenses which do not meet the laid down guidelines on licensing of premises and the attendant business type as proposed in the application. In my view therefore striking the right balance and giving

effect to elements of public interest and the rights of others like the Applicant with regard to the fundamental rights provisions which is indeed the reason why the Applicant came to Court. The principle of the supremacy of the Constitution declared in Article 2 particularly Sub Article 4 which defines in extreme terms laws and acts that maybe questioned for compatibility with the Constitution expresses the intent that all provisions of the Constitution are justiciable.

31. Suffice to say that the circumstances of this case call for the quashing of the decision arrive at by the Respondent of demolishing the business premises and as a consequence of which the Applicant's rights were limited without meeting the threshold of Article 24, 27, 47 and 50 of the Constitution. The learned Authors in **Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 1(1) para 12 page 270** made the following observation:

*"The remedies of quashing orders (formerly known as orders of certiorari), prohibiting orders (formerly known as orders of prohibition), mandatory orders (formerly known as orders of mandamus)...are all discretionary. The Court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying, and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief. Another consideration in deciding whether or not to grant relief is the effect of doing so. Other factors which may be relevant include whether the grant of the remedy is unnecessary or futile, whether practical problems, including administrative chaos and public inconvenience and the effect on third parties who deal with the body in question, would result from the order and whether the form of the order would require close*

*supervision by the court or be incapable of practical fulfilment. The Court has an ultimate discretion whether to set aside decisions and may decline to do so in the public interest, notwithstanding that it holds and declares the decision to have been made unlawfully. Account of demands of good public administration may lead to a refusal of relief. Similarly, where public bodies are involved the court may allow 'contemporary decisions to take their course, considering the complaint and intervening if at all, later and in retrospect by declaratory orders.'*

32. What comes in mind when weighing and examining the evidence by both the Applicant and the Respondent are the gaps created by the Respondent in satisfying the enquiry criteria questionnaire stipulated in paragraph 17 of this judgment. The Respondent made reference to certain legal instruments which empowered it to take the decision against the Applicant. The importance of this though dealt with under paragraph 17 by this Court I need to emphasize that the predominant issue here is the failure and breach by the Respondent as required by law on the duty of procedural fairness. In summary, it is all about the following elements:

- a) The nature of the decision being made and process followed in making it.
  - b) The nature of the statutory scheme and the terms of the statute pursuant to which the body operates.
  - c) The importance of the decision to the individual or individuals affected.
  - d) The legitimate expectations of the person challenging the decision
  - e) The choices of procedure made by the Respondent itself.
33. In this petition the brief summary of the case is very clear from the petition and the answer to it is also crystal clear from the affidavits of the Respondents. I find it difficult to concur with the Respondent's

learned Counsel on the position taken in so far as the infringement and violations committed as against the Applicant in the course of demolition of his premises and the seizure of his tools of trade which are up to the time of authoring this decision the whereabouts of those tools remained unknown. The Respondent seems to ask this Court to find that on the merits of the decision being challenged by the Applicant there is no manifest failure of procedural justice to warrant exercise of discretion within the judicial review jurisdiction. The Courts now and again in this Country have spoken on some of the anxiety and concerns raised by the Respondent as can be appreciated on the case of **Republic vs The Retirement Benefits Appeals Tribunals Ex Parte Augustine Juma & 8 Others [2013] eKLR**, that:

*“...it must be remembered that the function of this court sitting in judicial review is not concerned with the merits of the decision...I will add that judicial review is not an appeal from a decision, but a review of the manner in which the decision was made. Once a body is vested with the power to do so something under the law, then there is room for it to make that decision, wrongly as it is rightly. That is why there is the appellate procedure to test and examine the substance of the decision itself. It follows, therefore, that the correctness or ‘wrongness’ or error in interpretation or application of the law is not appropriately tested in judicial review forum. In simple terms, a ‘wrong’ decision done within the law and in adherence to the correct procedure can seldom be said to be ultra vires as to attract remedy for the prerogative writs. The Court of Appeal in Kenya Pipeline Company Limited vs. Hyosung Ebara Company Limited & 2 Others, CA Civil Appeal 145 of 2011 [2012] eKLR expressed this view as follows; Moreover, where the proceedings are regular upon their face and the inferior tribunal has jurisdiction in the original narrow sense (that is, to say, it has*

*power to adjudicate upon the dispute) and does not commit any of the errors which go to jurisdiction in the wider sense, the quashing order (certiorari) will not be ordinarily granted on the ground that its decision is considered to be wrong either because it misconceived a point of law or misconstrued a statute (except a misconstruction of a statute relating to its own jurisdiction) or that its decision is wrong in matters of fact or that it misdirects itself in some matter...”*

34. The duty of procedural fairness in so far as this case was concerned is flexible and variable and depended upon the appreciation of the context of the particular statute and the rights affected by the Respondent. In Article 10 of the Constitution the purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure appropriate to the decision being made and its statutory, institutional and social context. The decision maker bearing in mind must accord an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered before a final decision is arrived at to the advantage or disadvantage of the rights holder like in our case the Applicant.
35. It is now appropriate to recognize that in the circumstances of this case an important decision was made by the Respondent which had far reaching consequences to the Applicant but not withstanding that position the decision maker went ahead to rule with finality that there was a breach of some regulation by the Applicant and summary judgment was imposed as of necessity without due regard to procedural fairness. The descriptive analysis of the facts of this case underscores the appropriate scope of the Respondent’s authority which was subsequently exercised in excess without due regard to the complete account of the constitutional imperatives in Article 27, 47 and 50 of the Constitution.

36. For those reasons, the Applicant has discharged the burden of proof for this Court to grant the following declarations:

- a) *That an order of certiorari be and is hereby issued against the impugned decision by the Respondent in which a demolition order was issued in respect of Plot No. 12/18 Pioneer Estate in Eldoret Town.*
- b) *That an order and be and is hereby made for the Respondent to return to the Applicant all his tools of trade and business seized from the premises in violation of the law on procedural fairness.*
- c) *That the costs of this matter be borne by the Respondent.*
- d) *Each party be at liberty to apply.*

37. It is so ordered.

**DELIVERED, DATED AND SIGNED VIA CTS AT ELDORET THIS 11<sup>TH</sup> DAY  
OF**

**MAY 2026**

.....  
**R. NYAKUNDI  
JUDGE**