



**Olayiwola v Director General of Kenya Citizens and Nationals Management Services & 3 others (Judicial Review Application E183 of 2024)
[2025] KEHC 9443 (KLR) (Judicial Review) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9443 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW APPLICATION E183 OF 2024

RE ABURILI, J

JUNE 25, 2025

BETWEEN

SAHEED TUNDE OLAYIWOLA APPLICANT

AND

**THE DIRECTOR GENERAL OF KENYA CITIZENS AND NATIONALS
MANAGEMENT SERVICES 1ST RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF INTERIOR AND NATIONAL
ADMINISTRATION 2ND RESPONDENT**

THE INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The facts giving rise to these proceedings are that the Applicant herein Saheed Tunde Olayiwola is a Nigerian national who entered the Republic of Kenya lawfully as a tourist. He subsequently was issued with a valid Kenyan Class G Permit allowing him to live and work in Kenya. He then got married to a Kenyan citizen, G.N.O. and they are blessed with two issues M.I.W.J.O born on 12th March, 20... and M.T.J.O. born on 28th January 2.... (Initialed and redacted for legal reasons) as a shown by the birth certificates annexed to the affidavit of the exparte applicant sworn on 21st August, 2024.
2. That on or about the 14th day of August 2024, the Applicant who had travelled to his country of origin, Nigeria, upon his return to Kenya through Jomo Kenyatta International Airport, he was arrested by immigration officials, declared a prohibited and inadmissible immigrant and summarily deported back to Nigeria on 15th August, 2024, despite being in possession of valid visa.



3. That he was denied access to his wife and children or legal representative. He claims that he was never given any reasons for his denial of entry and summary deportation as not criminal charges were levelled against him. Neither was he informed of any criminal charges.
4. It is against the above background that the Applicant moved this Court by way of judicial review application under Order 53 of the Civil Procedure Rules seeking orders of certiorari, to quash the decision declaring the applicant as a prohibited immigrant; prohibition to prohibit the respondents' from denying the applicant the liberty and or freedom of movement to return to Kenya and mandamus to compel the respondents to remove the applicant' name from the prohibited immigrant and or inadmissible immigrant list.
5. In the grounds in support of his application, statutory statement and the affidavit, the Applicant contends that the decision to declare him a prohibited immigrant and deport him was made without notice, without affording him a hearing, and without being informed of the reasons for such a drastic administrative action. He avers that this action was not only procedurally unfair but also contrary to his rights under Articles 47 and 50 of *the Constitution*, as well as the provisions of the *Fair Administrative Action Act*, 2015.
6. He further asserts that he has a legitimate expectation to remain in Kenya based on his valid work and residence permits, his marriage to a Kenyan citizen and his status as a parent to Kenyan children.
7. In his submissions in support of his application, the applicant maintains that no due process was followed in his deportation contrary to the legal procedures set out in the Kenya Citizens and Immigration Act, 2011 and that he was condemned unheard.
8. He relies on the case of Management of Committee of Makondo Primary School and another v Uganda National Examination Board, HC Civil Misc Application No 18 of 2010, where the Supreme Court of Uganda stated as follows regarding the rules of natural justice:

“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase 'audi alteram partem' literally translates into 'hear the parties in turn', and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means a person against whom there is a complaint must be given a just and fair hearing.”
9. He also relies on Republic v Chief Justice of Kenya & 6 others Ex-parte Moiyo Mataiya Ole Keiwua [2010] eKLR Neutral citation: [2010] KEHC 4115 (KLR) on the right to be subjected to due process before any adverse decision can be taken against one, among other cases on due process.
10. The applicant also submitted that his right to fair administrative action under Article 47 of *the Constitution* were violated as he was never given a hearing or any reasons for the deportation and for being declared a prohibited or inadmissible immigrant. He relied on the case of Judicial Service Commission v Mbalu Mutava [2014] e KLR in support of the proposition that his rights under Articles 47 and 50(1) of *the Constitution* were violated.
11. The applicant further submitted that he was entitled to the reliefs sought relying on the case of Republic v Director of Immigration Services Exparte Planet Motors Company Ltd [2015] e KLR where this court allowed judicial review orders sought by the applicant against the respondent for placing the applicant on the immigration watchlist and declared such actions of the respondent to



be unlawful violating the applicant's right to movement and fair administrative action, among other reasons.

12. The applicant prayed for the orders sought with costs.
13. Opposing the application, the respondents filed a replying affidavit sworn on 11th November, 2024 by Christine Kinyua, a Senior Immigration Officer in the 1st respondent's office and the in charge of enforcement and compliance section in the Ministry of Interior and National Administration.
14. The deponent contends that the decision to declare the applicant a prohibited immigrant and inadmissible in Kenya and to deport the applicant to his country of origin was lawful and on advice of the 1st respondent, on account that the applicant was engaged in activities detrimental to the moral fabric and national security of the Republic of Kenya.
15. That the respondents acted within the law and powers derived from section 33 (1) of the [Kenya Citizenship and Immigration Act](#), 2011 and that the applicant cannot be allowed into the country since a work permit can be invalidated under section 41 (1) (f) of the Act where the permit holder has been declared a prohibited immigrant or an ineligible person.
16. The respondents annexed a declaration under section 43 of the Act, orders for removal and prohibition of the applicant both dated 11th March, 2024 signed by the Cabinet Secretary for Interior and National Administration.
17. The respondents also filed submissions dated 24th April, 2025 citing section 4 of the [Kenya Citizenship and Immigration Act](#) on the functions of the Director General,, section 33 which describes an immigrant or inadmissible person and section 43 on the power of the Cabinet Secretary to remove persons unlawfully present in Kenya, section 41 on invalidation of work or residence permit, giving reasons why the applicant was declared a prohibited immigrant, an inadmissible person and deported from Kenya.
18. It was submitted that the applicant is not entitled to the judicial review orders sought because the applicant had not demonstrated that he has met the threshold for grant of judicial review orders and that he is seeking a merit review of the decision of the respondents and not the process, contrary to established legal principles espoused in various decisions among them- Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300; Republic v Kenya Revenue Authority ex parte Yaya Towers limited (2008) eKLR; Municipal Council of Mombasa v Umoja Consultants Ltd [2002] eKLR.
19. It was submitted that the parameters for grant of the orders sought had not been fulfilled by the applicant and that the respondents had acted within the powers conferred under the Act hence the application should be dismissed, noting that granting orders sought would be interfering with the Respondent's statutory powers and mandate.

Analysis and determination

20. I have considered the application and the opposition thereto together with the respective parties' submissions and constitutional as well as statutory provisions coupled with case law cited.
21. The main issues for determination are:
 - a. Whether the Applicant's deportation and designation as a prohibited immigrant were procedurally fair and lawful;



- b. Whether non-disclosure of the reasons for the deportation was a violation of the Applicant's rights to fair administrative action;
 - c. Whether the Court can issue an order of certiorari to quash the deportation order and the decision declaring the Applicant a prohibited immigrant;
 - d. Whether the Court can issue an order of mandamus to direct the Respondents to remove the applicant's name from a prohibited or inadmissible immigrant.
22. Under Article 47 of *the Constitution* and the *Fair Administrative Action Act*, every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. This includes the right to be informed of any adverse action and the right to a hearing before such action is taken.
 23. It follows that the declaration of a person as a prohibited immigrant under Section 33 of the *Kenya Citizenship and Immigration Act* must comply with constitutional safeguards. The respondents claim that they declared the applicant as a prohibited and inadmissible immigrant in exercise of their powers and mandate under the law as cited hereinabove, after getting confidential information that he was involved in activities which were immoral and security risk to the country.
 24. Although the law permits the use of confidential information in matters of national security, such powers are not absolute and must still observe the principles of natural justice, especially when they result in the deprivation of liberty or expulsion of a person affected from the country.
 25. In the present case, the Respondents did not accord the Applicant any opportunity to be heard prior to declaring him a prohibited immigrant. No specific allegations or evidence were disclosed, even before this Court. The blanket reference to a discovery that the applicant was engaged in some activities which are immoral or a national security risk without more, in my view, does not meet the threshold of procedural fairness required under *the Constitution* and the *Fair Administrative Action Act*.
 26. Further, Kenya is a signatory to the International Covenant on Civil and Political Rights. (ICPR) which is part of the law of Kenya pursuant to Article 2(5) of *the Constitution*. Article 13 of the ICCPR provides:

“An alien lawfully in the territories of a state party to the present covenant may be expelled there from only in pursuance of a decision reached in accordance with the law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”
 27. This Court takes judicial notice that the admission of aliens to this Country is not a right. It is a privilege which is granted only upon terms. In other words, the freedom of movement of the applicant may be limited under Article 24 of *the Constitution*. However, such limitation must be within the legal and constitutional parameters permitted.
 28. In Republic –Vs- Otieno Kajwang Exparte Mohmud Siras (2009) eKLR, Dulu J held that a suspect deserves the opportunity to give his side of the story before any adverse action can be taken against him.
 29. In Samura Engineering Ltd. & Others –Vs- Kenya Revenue Authority High Court Petition No. 54 of 2014 Majanja J observed that Kenya and its people must now embrace the culture of justification which requires that every official act must find its locus in the law and under pinning *the Constitution*.



30. The Applicant has family ties in Kenya and held valid immigration status at the material time. He also had a work permit. Such factors call for a higher threshold of justification before drastic administrative action like deportation is taken.

31. This case is similar to the case of Republic v Director of Immigration Services & another Ex-Parte Planet Motors Company Limited & another [2017] KEHC 7723 (KLR) which involved the applicant being placed on a watch list without being given any reasons for such action by the state. This Court stated as follows in allowing his application for judicial review orders:

“62. Section 43 (3) of the Act further provides that an order to remove persons found unlawfully present in the country shall be carried out in such a manner as the Cabinet Secretary may direct, subject to *the Constitution* and related laws. However, the decision by the 1st Respondent has prohibited the Interested Party from entering the country upon his unlawful deportation without following due process in sending him out of the country.

63. Article 47 of *the Constitution* of Kenya guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The procedure for fair administrative action is elaborated in section 4(3) and (4) of the *Fair Administrative Action Act* No. 4 of 2015 as follows:

(3) “Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

- a. prior and adequate notice of the nature and reasons for the proposed administrative action;
- b. an opportunity to be heard and to make representations in that regard;
- c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
- d. a statement of reasons pursuant to section 6 of the Act;
- e. notice of the right to legal representation, where applicable;
- f. notice of the right to cross-examine or where applicable; or
- g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.”

64. In the instant case, there is absolutely no evidence to show that the ex parte applicant was heard or given an opportunity to be heard before the decision to watch list the interested party by the immigration department was made. Accordingly, I find that the provisions of Article 47 of *the Constitution* on



the right to expeditious, efficient, lawful, reasonable and procedurally fair administrative action; and the provisions of Article 50(1) of *the Constitution* on the right to a fair hearing were violated. In addition, the *Fair Administrative Action Act* No4 of 2015 was violated by the respondent.”

32. As was held by J. B. Ojwang, J (as he then was) in the Nairobi High Court Misc. Civil Application No. 430 of 2004, Leonard Sitamze V The Minister For Home Affairs & 2 Others), a judge is among the very few people who are entitled to know the reasons behind the deportation of a foreign national. Odunga, J extended the above observation further to assert in the Republic v Minister of State for Immigration and Registration of Persons Ex-Parte C.O. [2013] eKLR case and stated that the State must exhibit the evidence in support of the decision to deport a foreign national.
33. Indeed, a foreign national has rights and is entitled to equal protection of the law as stipulate din Article 27 of *the Constitution*.
34. an immigrant is a human being and is not to be denied any of the inherent human rights or those rights that our Constitution guarantees, even if limited to some extent. He is entitled to know the specific reasons for his deportation. More so, where he has a family, the existence of family ties and legal residency should not be ignored and natural justice cannot be sacrificed at the altar of administrative convenience or secrecy.
35. Confidential intelligence may warrant non-disclosure of full details, but procedural fairness still requires notice of allegations and a chance to respond unless national security unequivocally prohibits even that minimal disclosure.
36. In PJJ v Director of Immigration Services & 3 others; Ajabu Technology Solutions Limited (Interested Party) (Constitutional Petition E204 of 2021) [2023] KEHC 22370 (KLR) (Constitutional and Human Rights) (21 September 2023) (Judgment), a case determined quite recently, Mrima J stated, inter alia that:
 - “ 80. Whereas Section 43 of the Citizenship Act gives the power to the Cabinet Secretary to make an order for the removal of such persons from Kenya, subsection 3 calls upon the Cabinet Secretary to discharge such duties subject to *the Constitution* and the related laws. In that case, it goes without say that, at the very bare minimum, the Cabinet Secretary ought to interrogate the manner in which the subject was declared unlawful in Kenya before making the order removing the person from the country. In this case, there is no evidence that the Cabinet Secretary was satisfied that the Petitioner was rightfully declared unlawfully in Kenya before issuing the removal order.”
37. The learned Judge underscored legitimate expectation based on representation of valid work permits and the need for notification prior to adverse action.
38. In High Court Petition No. 586 of 2012 between Bashir Mohamed Jame Abdi and Minister for Immigration & Others, Lenaola J (as he then was) held that:
 - “By denying the subject Abdi Bashir Mohamed alias Cabdiqani Bashir Moxamed entry into Kenya and deporting him to the UK without a formal process or service on him with any written allegations, reasons or order/s and without according him a hearing, to contact his family or counsel, to appeal against the order of denial of entry into Kenya d deportation to the UK was a violation of the subject’s constitutional rights of a citizen under Article 123, his fundament rights and freedoms as to equal treatment and equal action/justice, to



deprivation of the society and recognition of his family to a fair hearing under Articles, 27(1), 39, 45(1), 47 and 50(1) of *the Constitution*.” (emphasis mine)

39. See also *Moumouni Ali v Director General* [2020] eKLR where A.N.Makau J as he then was relied on several other decisions including the *Planet Motors* case and *Bashir Jame* (supra).
40. In *Hannan v Director General* [2017] e KLR, the Court underscored that the Executive is not sole arbiter and that when Article 47 guarantees are at stake, judicial intervention is appropriate. Similarly, in *Limin v Director General of Immigration*, [2025] e KLR, the court reinforced that deportation actions must be reasonable, lawful, and procedurally fair.
41. In this case, the applicant had a valid residence and work permit. He also has a family in Kenya. He therefore had a legitimate expectation that the Government would not summarily deport him without due process. Due process is at all times inherent in all administrative decisions being taken by the state or any other body where rights of persons are concerned. This is what courts have pronounced severally although it appears the state does not care much about these pronouncements, going by the number of similar cases that this court handles from time to time.
42. This Court is satisfied that the decision to declare the Applicant a prohibited immigrant and his subsequent deportation was taken without affording the Applicant a fair hearing and a fair administrative action. The decision by the respondents no doubt violated the Applicant’s rights under Articles 47 and 50 of *the Constitution* was procedurally unfair and irrational for lack of disclosure and evidence to support the deportation and to declare the applicant a prohibited and inadmissible immigrant.
43. Accordingly, I find merit in the judicial review application and make the following orders:
 - a. An order of certiorari is hereby issued quashing the decision of the Respondents communicated to him on 14th August 2024 declaring the Applicant an inadmissible/prohibited immigrant and the deportation order made against him.
 - b. An order of prohibition is hereby issued restraining the Respondents from denying the applicant the right to return to Kenya, or denying him the freedom of movement within the Republic of Kenya without giving reasons for such denial and or treating the Applicant as an inadmissible/ prohibited immigrant unless and until due process is followed.
 - c. Mandamus is hereby issued compelling the respondents to remove the applicant’s name from the list of inadmissible/ prohibited immigrants until due process is followed.
 - d. For avoidance of doubt, since the Petitioner was already deported, and there is no prayer to have him returned to Kenya, this Court cannot make orders allowing him back to the country on the basis of the work permit which was cancelled on the instructions of the respondents until the applicant formally applies for reconsideration of entry into the country and on merit, in compliance with lawful procedures
 - e. Each party to bear their own costs of the application.
44. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

