Republic v Special Economic Zones Authority & another; Nova Pioneer Tatu City Primary School Property Sez Limited (Ex parte Applicant) (Judicial Review Miscellaneous Application E139 of 2024) [2025] KEHC 12165 (KLR) (Judicial Review) (22 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12165 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW MISCELLANEOUS APPLICATION E139 OF 2024

JM CHIGITI, J

AUGUST 22, 2025

BETWEEN

REPUBLIC ..... APPLICANT

AND

SPECIAL ECONOMIC ZONES AUTHORITY ..... 1ST RESPONDENT

THE CHIEF EXECUTIVE OFFICER, SPECIAL ECONOMIC ZONES AUTHORITY ..... 2ND RESPONDENT

AND

NOVA PIONEER TATU CITY PRIMARY SCHOOL PROPERTY SEZ LIMITED ..... EX PARTE APPLICANT

JUDGMENT

1. The Applicant herein filed a Notice of Motion dated 1st November, 2024 seeking the following orders;

    1. That this Honourable Court be pleased to issue an order of Certiorari to remove into this Court for purposes of quashing the decision of the Respondents, as communicated vide the 2nd Respondent's letters dated 2nd April 2024 and 22nd July 2024, to reject the Ex-Parte Applicant's application dated 11th January 2024 for renewal of a Special Economic Zone Enterprise Licence at the Tatu City Special Economic Zone and deny the Ex-Parte Applicant tax incentives and other benefits in respect of the Special Economic Zone activities contemplated and proposed in the said application.

    2. That this Honourable Court be pleased to issue an Order of Mandamus compelling the Respondents to allow the Ex-Parte Applicant's application dated 11th January 2024 for

renewal of a Special Economic Zone Enterprise Licence at the Tatu City Special Economic Zone and issue to the Ex-Parte Applicant a Special Economic Zone Enterprise Licence in respect of the Special Economic Zone activities contemplated and proposed in the said application.

3. That this Honourable Court be pleased to issue an Order of Mandamus compelling the Respondents to grant the Ex-Parte Applicant all the rights, tax incentives and benefits particularized in Sections 33, 34 and 35 of the *Special Economic Zones Act* and the provisions of various fiscal legislation namely the *Income Tax Act*, the *Value Added Tax Act*, the *Excise Duty Act*, the *Stamp Duty Act*, the *Miscellaneous Fees and Levies Act* in respect of the Special Economic Zone Enterprise Licence so issued and the Special Economic Zone activities contemplated and proposed in the Ex-Parte Applicant's application dated 11th January 2024.

4. That this Honourable Court be pleased to issue an Order of Prohibition prohibiting the Respondents, their agents, servants and/or officers acting under them or otherwise from denying the Ex-Parte Applicant any of the rights, tax incentives and benefits particularized in Sections 33, 34 and 35 of the *Special Economic Zones Act* and the provisions of various fiscal legislation namely the *Income Tax Act*, the *Value Added Tax Act*, the *Excise Duty Act*, the *Stamp Duty Act*, the *Miscellaneous Fees and Levies Act* in respect of the Special Economic Zone Enterprise Licence so issued and the Special Economic Zone activities contemplated and proposed in the Ex-Parte Applicant's application dated 11th January 2024.

5. That this Honourable Court be pleased to grant such other orders or writs as may be fair, just, necessary and appropriate in the circumstances.

6. That the costs of this application be borne by the Respondents.

2. It argues that on 19th January 2023, it was granted an Enterprise Licence (the First Licence) authorizing it to construct and lease commercial premises, including educational facilities, on Parcel No. 4A – NR02, for a period of one year, expiring on 18th January 2024.

3. It is its case that acting on the strength of this licence, the Applicant invested approximately USD 4.5 million in the development of the premises, which were subsequently leased to Nova Pioneer Tatu City Primary School.

4. It argues that at no point during the life of the First Licence did the Respondents raise any legal or procedural concerns, nor did they amend, suspend, or revoke the licence.

5. On 11th January 2024, the Applicant applied for a renewal of the First Licence.By a letter dated 2nd April 2024, the Respondents rejected the renewal application, alleging that the proposed activities—construction and leasing of educational facilities—were not permissible under the SEZ Act and were therefore ineligible for SEZ-related incentives.

6. Aggrieved, the Applicant appealed the decision pursuant to section 37(1) of the SEZ Act, but the Respondents upheld the rejection through a further letter dated 22nd July 2024.That precipitated the filing of the instant suit.

7. The Applicant notes that the Respondents admit three fundamental facts: first, that the First Licence was never amended or revoked during its life; second, that there was no change in the governing law during that period; and third, that the only thing that changed was the Respondents' internal interpretation and application of the SEZ Act and its subsidiary regulations.

8. The Applicant's case is that such a shift in interpretation, if genuine, constituted a proposed administrative action to which the safeguards of the *Fair Administrative Action Act* applied, including

the duty to provide prior and adequate notice and an opportunity to be heard which the Respondents failed to meet these obligations.

9. The Applicant argues that no prior communication was issued regarding the purported reinterpretation of the SEZ Act, nor was any opportunity provided for the Applicant to be heard or to make representations before the impugned decision was taken.

10. The Applicant further contends that the Respondents' claim that the renewal application process itself served as notice of a potential administrative action is misplaced, since the process was initiated by the Applicant, not the Respondents, and cannot substitute the legal requirement of prior notice from an administrator.

11. It argues that the Respondents should have initiated the proposed administrative action and is therefore bound to notify the affected person and the failure to provide such notice and an opportunity to be heard was not only procedurally improper but also a breach of legitimate expectation.

12. It is its strong persuasion that having lawfully operated under the First Licence, and with no indication from the Respondents of any issue, the Applicant had a reasonable expectation that the renewal would be processed in good faith, and in accordance with the same legal standards under which the First Licence was granted.

13. Section 4(6) provides an inexhaustive list of permissible activities within SEZs, including convention facilities and technology parks—sectors which inherently involve education while the 1st Respondent's Strategic Plan (2023–2027) outlines its intention to partner with educational and training institutions.

14. It is its case that, the Ministry of Investments, Trade and Industry, in its 2025/26–2027/28 subsector report, calls for deeper integration with educational facilities in SEZs. Regional and international policy instruments such as the East African Community Draft SEZ Regulations 2024 also recognize 'educational zones' as legitimate SEZ areas, and the UNCTAD World Investment Report 2019 recommends the inclusion of education in SEZs for sustainable and inclusive economic growth.

15. The Applicant challenges the Respondents' reliance on amendments introduced by the Finance Act 2023 and in particular the argument by the Respondents that these amendments introduced classifications of customs and non-customs controlled areas that would now exclude educational facilities from SEZ incentives.

16. According to the Applicant these amendments only became effective on 31st July 2024, following a Supreme Court decision, well after the impugned decisions had already been made.

17. The Applicant further argues that contrary to the Respondents' belief that the Applicant applied solely for the construction of school premises, the Applicant argues that it had initially applied to develop and lease diverse commercial facilities, including but not limited to educational facilities and the rejection of the renewal on the mistaken basis that the Applicant sought only to develop schools is thus factually incorrect and legally flawed.

18. The Applicant asserts that it's investment has been placed at risk, and it has faced significant uncertainty in its business operations and the general public is also being denied the benefit of access to quality, immersive educational facilities envisioned in the project.

19. The Applicant contends that the Respondents' conduct has discouraged investment, undermined predictability in the legal environment, and weakened the integrity of Kenya's SEZ regime.

20. The Applicant contends that the Respondents' actions have violated the right to equality and non-discrimination under Article 27; the right to property under Article 40; the right to economic and

social development under Article 43; the right to fair administrative action under Article 47; and the right to a fair hearing under Article 50.

21. The Applicant maintains that the Respondents acted irrationally, unreasonably, arbitrarily, and in bad faith, in rejecting the Renewal Application.

22. In its submissions ,the Applicant maintains that the Respondents' decision to reject its enterprise licence renewal application was procedurally flawed, irrational, arbitrary, and in violation of the principles of fair administrative action enshrined under Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015 (FAAA).

23. The Applicant avers that no prior and adequate notice was issued by the Respondents regarding a purported change in their interpretation or application of the Special Economic Zones (SEZ) legal framework, which the Respondents themselves relied upon in rejecting the renewal application.

24. Reliance is placed in the case of Republic v National Land Commission & 2 Others Ex Parte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kahawa West) (2018) eKLR, Geothermal Development Company Limited v Attorney General & 3 Others [2013] KEHC 4725 (KLR), and Kenya Revenue Authority v Export Trading Company Limited [2022] KESC 31 (KLR), which underscore the centrality of prior notice and procedural fairness in administrative decision-making.

25. The Applicant further argues that the only communication received from the Respondents was the rejection letter itself, which cannot, by any legal standard, be construed as a prior notice of proposed administrative action.

26. The Applicant submits that the administrative process was procedurally unfair and thus fatally defective.

27. It submits that the Respondents' reasons for the rejection namely, that the proposed activity was outside the scope of Section 4(6) of the SEZ Act were based on a fundamental misapprehension of both fact and law.

28. It submits that The Respondents wrongly construed the Applicant's proposed zone activity as solely relating to the construction of school facilities, when in fact it involved the broader commercial activity of constructing and leasing premises, including educational facilities. Furthermore, the Respondents misconstrued Section 4(6) of the SEZ Act as containing an exhaustive list of permissible activities, whereas the statute clearly provides for an open-ended, illustrative list.

29. It submits that given the absence of any change in law or revocation of the First Licence, the Applicant submits that a reasonable administrator would not have arrived at the same decision on identical facts and legal framework, and thus the impugned decision was irrational within the meaning of Wednesbury unreasonableness as articulated in Council of Civil Service Unions v Minister for the Civil Service (1985) AC 374.

30. The Applicant submits that the impugned decision was arbitrary, made without any rational connection between the facts and the outcome, and devoid of reasonable justification, despite there being no change in law or circumstances between the issuance of the First Licence and the renewal application.

31. Reliance is placed in Republic v Kenya Bureau of Standards & 4 others; Ex parte United Millers Limited; Department of Health Services, Nakuru County (Interested Party) [2019] KEHC 11292 (KLR) the Applicant argues that the Respondents acted in a capricious and abusive manner, exercising public power without adherence to the legal standards required of administrative bodies.

The Respondents' Case;

33. The Respondent, through their Chief Executive Officer, argue that the Applicant was initially issued with an enterprise licence on 19th January 2023, valid until 18th January 2024, authorizing the construction and leasing of commercial premises, including educational facilities, within a designated Special Economic Zone (SEZ) in Tatu City.

34. It argues that the said licence was granted following an initial assessment that determined the proposed activities were consistent with the SEZ Act and met applicable environmental, security, and public health standards.

35. It is its case that upon expiry of the initial licence, the Applicant submitted a renewal application on or about 11th January 2024.

36. It argues that, upon reassessment of the application, and following a more rigorous interpretation of the SEZ Act and the SEZ Regulations, 2016, the 1st Respondent determined that the proposed activity construction and leasing of educational facilities did not constitute a core or permissible activity under the SEZ framework, as contemplated under Section 5 of the SEZ Act.

37. It argues that accordingly, the renewal application was declined on 2nd April 2024, and that position was subsequently upheld by the 2nd Respondent on 22nd July 2024.

38. The Respondents contend that although the initial licence was issued under a previous interpretation of the SEZ Act, they are under a continuing statutory obligation to ensure compliance with the evolving legal and policy framework governing SEZs.

39. It is the Respondent's case that issuance of a prior licence does not confer vested or perpetual rights to renewal, nor does it give rise to a legitimate expectation of continued approval, particularly where the Respondents are statutorily empowered under Sections 26, 27 (6), and 29 (2) of the SEZ Act to review, amend, or decline renewal of licences based on prevailing considerations of law and policy.

40. The Respondents maintain that the impugned decision was reached after a lawful and substantive reassessment of the applicable legal provisions and the nature of the proposed activities.

41. The Respondents maintains that their actions were within the scope of their statutory mandate and that the Applicant has misconstrued the nature of the SEZ licensing regime, which does not guarantee automatic or continued licensing upon renewal.

42. The Respondents argue that the doctrine of legitimate expectation does not apply in this instance, as the mere issuance of an initial licence does not create a representation or promise sufficient to give rise to such an expectation.

43. The Respondents maintain that no representation was made to the Applicant that its renewal application would be approved, particularly in light of the statutory requirement that each application be independently assessed.

44. The Respondents maintain that their decision to reject the renewal application was lawful, reasonable, procedurally fair, and in furtherance of their obligation to uphold the integrity and objectives of the SEZ programme as envisioned under the SEZ Act.

45. The Respondents additionally assert that the impugned decision was rational, lawful, and aligned with their evolving interpretation of the *Special Economic Zones Act* (SEZ Act), particularly in light of legislative amendments introduced by the Finance Act, 2023 and inspired by the amendment of

Sections 4(4) and 6 of the SEZ Act, which more clearly delineate customs-controlled and non-customs-controlled areas within SEZs.

46. The 1st Respondent contends that while educational facilities may constitute a valid business activity, such undertakings fall outside the intended scope of incentivized SEZ activities and are better situated in non-customs-controlled zones, which do not attract the benefits available under the SEZ framework.

47. The Respondents argue that, under Section 29(2) of the SEZ Act, they are mandated to satisfy themselves that proposed activities meet the objectives of the SEZ program.

48. They believe that, construction and leasing of educational premises is not a core activity contemplated under Section 5 of the Act, and to grant or renew a licence for such activities would undermine the integrity of the SEZ regulatory regime and create a dangerous precedent that could dilute the intended sector-specific focus of SEZs.

49. It is their case that each licensing or renewal application must be evaluated on its own merits and under the prevailing legal framework.

50. They deny any violation of constitutional rights under Articles 27, 40, 47, or 50, and maintain that their decision adhered to the principles of fair administrative action as required under Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act* (FAA).

51. They further aver that the renewal process itself served as adequate notice, that the Applicant had the opportunity to present its case, and that the reasons for rejection were communicated clearly and lawfully.

52. Further, the Respondents maintain that the mere issuance of a first license did not confer any perpetual entitlement to renewal, nor did it create a legitimate expectation that similar approval would be granted in the future, particularly in light of the changed legal context.

53. The Respondents also refute claims that their decision undermines investor confidence or the constitutional right to education, noting that the Applicant remains at liberty to pursue its activities outside the SEZ framework.

54. They underscore that the SEZ licensing scheme is designed to incentivize specific targeted activities, and the inclusion of non-aligned enterprises would erode the strategic and economic value of the regime.

55. Finally, the Respondents warn that granting the renewal would set an undesirable precedent, potentially opening the floodgates to non-qualifying businesses seeking SEZ incentives, thereby frustrating the statutory objectives and compromising policy integrity. They therefore urge the Court to find that the decision was lawful, reasonable, procedurally fair, and made within the scope of the Respondents' statutory mandate under the SEZ Act.

56. The Respondents submit that the decision to decline the renewal of the Applicant's Special Economic Zone (SEZ) Enterprise License was lawful, procedurally fair, and within the ambit of the statutory mandate.

57. Reliance is placed in Ex Chief Peter Odoyo Ogada underscores the doctrine of separation of powers, emphasizing that administrative bodies possess discretion within their statutory mandates, and judicial review should be limited to examining rationality and legality, rather than substituting the court's own discretion.

58. The Respondent argues that it acted under Section 27(6) of the SEZ Act, which empowers revocation, suspension, or amendment of licenses for non-compliance with the Act or licensing conditions.

59. According to them, the Applicant was afforded procedural fairness in line with Section 4(3) of the *Fair Administrative Action Act*, having been issued written notice of the grounds for non-renewal and invited to respond within a reasonable timeframe.

60. A compliance audit, as detailed in the Respondent's affidavit, revealed that the Applicant's activities specifically construction and leasing of educational facilities did not fall within the permissible activities under Section 5 of the SEZ Act. Follow-up communications were issued to clarify deficiencies, but the Applicant failed to demonstrate compliance.

61. In support of non-interference with the executive decision, the Respondents rely on the South African Constitutional Court's decision in Democratic Alliance v The President of the Republic of South Africa & 3 Others: CCT 122/11 [2012] ZACC 24, which holds that executive decisions should only be set aside if irrational, ensuring respect for the separation of powers. The Respondents' actions align with this principle, having acted within statutory authority and observed procedural fairness.

62. It is their submission that the decision also reflects adherence to policy changes under the Finance Act, 2023, which amended Section 4(4) of the SEZ Act by redefining SEZs as areas comprising customs-controlled and non-customs-controlled zones focused on sector-appropriate infrastructure and economic activities eligible for customs duty exemptions. This legislative amendment signifies a clear policy shift emphasizing export-oriented and customs-exempt operations, thereby excluding activities such as the leasing of educational facilities. The Respondents' interpretation and application of this amendment are lawful and consistent with the new policy framework.

63. Further, statutory provisions such as Sections 3, 26(b), 29(b), and 31 of the SEZ Act reinforce that only recognized and eligible activities within SEZs are permissible, and the leasing of educational facilities does not fall within this scope.

64. The Respondents' decision to exclude such activities aligns with the intended objectives of promoting investment, economic growth, and competitiveness through sector-appropriate uses.

65. On the issue of legitimate expectation, the Respondents contend that no legitimate expectation of automatic renewal arises from the issuance of the initial license, especially where the statutory framework explicitly vests discretion in the Respondent to assess compliance upon renewal.

66. The doctrine of legitimate expectation requires a clear, unambiguous representation or established practice, as affirmed in Republic v Kenya Revenue Authority Ex Parte Mangi [2018] eKLR, which is absent in this case. Furthermore, Kenya Airways Ltd v Kenya Revenue Authority [2007] eKLR affirms that legitimate expectation cannot override statutory discretion, particularly when public interest and legislative mandates are at stake.

67. The Respondents maintain that they acted consistently with the legal framework, ensuring compliance with statutory and policy requirements, and affording the Applicant due process. The refusal to renew the license was a lawful exercise of discretion under the amended SEZ legal regime and does not amount to illegality, procedural unfairness, or irrationality warranting judicial intervention. Accordingly, the Respondent prays that the Applicant's application for judicial review be dismissed.

68. The Respondents further submit that the decision to decline the renewal was within the scope of its statutory mandate as conferred by Section 27(6) of the *Special Economic Zones Act*, Cap 517A, which authorizes revocation, suspension, or amendment of licenses for non-compliance with the Act or license conditions.

69. It is also submitted that the Respondents complied fully with the requirements of procedural fairness as enshrined in *the Constitution* and the *Fair Administrative Action Act*, 2015. The Applicant was provided with formal written notice of the reasons for non-renewal, afforded adequate opportunity to respond, and was engaged through subsequent communications to address identified compliance deficiencies. This process fulfilled the obligations under Section 4(3) of the *Fair Administrative Action Act* regarding notice and the right to be heard.

70. They submit that the decision was also informed by the findings of a compliance audit, which revealed that the Applicant's activities specifically the construction and leasing of educational facilities were inconsistent with the permissible economic activities outlined in Section 5 of the SEZ Act and the redefined scope of SEZ operations under the Finance Act, 2023.

71. Further it is submitted that the amendments introduced by the Finance Act, particularly Section 100, materially altered the statutory framework, restricting SEZ activities to those eligible for customs duty exemptions and aligned with sector appropriate economic uses.

72. The Respondents submit that they were under a legal obligation to ensure all licensees complied with these updated legislative and policy requirements.

73. The Respondents deny the applicability of the doctrine of legitimate expectation to the Applicant's claim for automatic license renewal.

74. They submit that there is no explicit provision for retroactive effect, and general principles of statutory interpretation and constitutional safeguards against retroactivity support this position. Consequently, the revised policy framework affects activities and licensing decisions going forward, not past licenses or actions taken under the previous legal regime.

75. The Respondents submit that they acted within Article 47 and relevant statutes.

Analysis and Determination

Following are the issues for determination:

a. Whether this court has jurisdiction.

b. Whether the Respondent's decision was lawful, procedurally fair and regular.

c. Whether the Applicant's right to legitimate expectation was violated.

d. Whether the refusal to renew the licence was legal.

e. Whether the Ex Parte Applicant's was given a chance to be heard.

f. Whether the Ex Parte Applicant is entitled to the reliefs sought.

g. Who shall bear the costs.

Whether this court has jurisdiction

In determining cases, courts are guided by the power that is donated by *the constitution* and the applicable legislative.

76. In the Supreme Court Case of Dickson Ngigi Ngugi v Commissioner of Lands S.C Petition No. 9 of 2019 [2019] eKLR, it was held that;

> "(36) 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" v Caltex Oil, (Kenya) Ltd [1989] KLR 1, "jurisdiction is everything. Without it, a court has no power to make one more step".
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> (37) It is, therefore a basic rule of procedure that jurisdiction must exist when the proceedings are initiated. Because the question of jurisdiction is so fundamental, a limitation on the authority of the court, it can be raised at any stage of the proceedings by any party or even by the court suo motu. As a matter of practice, this Court has a duty of jurisdictional inquiry to satisfy itself that it is properly seized of any matter before it.
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> (38) It is a settled legal proposition that conferment of jurisdiction is a legislative function and it can only be conferred by *the Constitution* or statute."

77. In order to determine this issue, the court is guided by the case of Republic v Karisa Chengo & 2 others [2017] eKLR where it was held that this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. After extensive analysis of the law, the appointment and swearing in of Judges, the apex Court held:

> "It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of *the Constitution*, which prohibits the High Court from exercising jurisdiction in respect of matters "reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)".

78. Article 162(2) (b) of *the Constitution* empowers Parliament to "establish Courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land." In this regard and pursuant to Article 162(3) or *the Constitution*, Parliament enacted the *Environment and Land Court Act*, Act No. 19 of 2011.

79. The Applicant's case in the instant suit revolves around the issue of the renewal of the Applicant's licence to enable the Applicant to continue with its activities around the construction and leasing of educational facilities. There is an issue of compliance audit that is raised in the suit.

80. The case also points at issues of policy changes introduced by the Finance Act, 2023. At the center of the suit, is Section 100 of the Finance Act, 2023 which amended Section 4(4) of the *Special Economic Zones Act* to redefine the nature and scope of special economic zones (SEZs). It provides:

> "100. Section 4 of the *Special Economic Zones Act*, 2015, is amended by deleting subsection 4 and substituting therefor the following new subsection – (4) A special economic zone shall be a designated geographical area which may include both customs controlled area and non-customs controlled area where business enabling policies, integrated land uses and sector-appropriate onsite and off-site infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where development of zone infrastructure and goods introduced in customs-controlled area are exempted from customs duties in accordance with customs laws."

81. The question of policy shift, around the provision of infrastructure and integration of land use while restricting the scope of activities to those eligible for customs exemptions under customs laws has also been raised in this suit.

82. The court is placed in a pathway where it is being invited to determine whether activities previously undertaken by the Applicant fall within the redefined scope of allowable activities under the SEZ framework.

83. In this case, there is a question whether the leasing educational facilities deviates from the intended commercial and industrial objectives of the designated SEZ area in question.

84. This court has looked at the forgoing through the lens of Article 165(5) (b) provides as follows:

> "The High Court shall not have jurisdiction in respect of matters— falling within the jurisdiction of the courts contemplated in Article 162 (2)."

85. The Courts contemplated in Article 162(2) are those with the status of the High Court to hear and determine disputes relating to Employment and Labour Relations; and the Environment and the use and occupation of, and title to, land. Parliament was donated the power to establish the said Courts and determine their jurisdiction and functions by the same Article.

86. In exercising its Judicial Review jurisdiction the High Court does not exercise the powers conferred upon it under Article 165(3)(a) but rather the powers conferred upon it under Article 165(3)(e) as read with Article 165(6) and (7) of *the Constitution*.

87. The High Court's power and authority is derived from *the Constitution* and where *the Constitution* limits the jurisdiction of the High Court, that limit is legal and proper.

88. By creating the Courts with the status of the High Court to deal with employment and labour relations disputes on one hand and environment and land disputes on the other, the people of Kenya appreciated the importance of these specialized Courts.

89. The court has looked at Section 13 of the *Environment and Land Court Act*, 2011 provides as follows:

> "(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with

the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—

(a) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) Relating to compulsory acquisition of land;

(c) Relating to land administration and management;

(d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) Any other dispute relating to environment and land.

(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—

(b) Prerogative orders;

90. Section 13 of the *Environment and Land Court Act* outlines the jurisdiction of the Environment and Land Courts as follows:-

"(2) In exercise of its jurisdiction under Article 162 (2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes-

a) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

e) Any other dispute relating to environment and land."

91. Upon considering and without getting into the merits of the case, the issues and the submissions as highlighted by the litigants herein, this court is of the informed and firm position that the suit should be heard and determined by the Environment and Land Court.

The other issue;

92. Having determined that this court lacks jurisdiction it cannot proceed to determine the other issues and I so hold.

Disposition;

93. The issues raised herein fall within the jurisdiction of the Environment and Land Court given that The Environment and Land Court has power to issue prerogative orders.

Order:

This suit is hereby transferred to the Environment and Land Court for hearing and determination.

DATED, SIGNED AND DELIVERED AT NAIROBI VIA CTS THIS 22ND DAY OF AUGUST 2025.

.....

J. CHIGITI (SC)

JUDGE