



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Pharmacy & Poisons Board; Prism Life Sciences Limited (Interested Party);  
Galaxy Pharmaceuticals Limited (Ex parte Applicant) (Judicial Review Application  
E113 of 2025) [2025] KEHC 12028 (KLR) (Judicial Review) (15 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12028 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JUDICIAL REVIEW**

**JUDICIAL REVIEW APPLICATION E113 OF 2025**

**RE ABURILI, J**

**AUGUST 15, 2025**

**IN THE MATTER OF AN APPLICATION BY GALAXY PHARMACEUTICALS LIMITED  
FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF A NOTICE DATED 26<sup>TH</sup> MARCH, 2025  
BY PHARMACY AND POISONS BOARD OF INTENTION TO  
CANCEL REGISTRATION OF FORTY (40) HEALTH PRODUCTS**

**AND**

**IN THE MATTER OF SECTION 3 B (2) (E) OF THE PHARMACY AND  
POISONS ACT, CAP 244 LAWS OF KENYA AS READ TOGETHER WITH  
SECTION 11 (1) (B) OF THE PHARMACY AND POISONS (REGISTRATION  
OF HEALTH PRODUCTS AND TECHNOLOGIES) RULES, 2022**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT**

**AND**

**ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010.**

**AND**

**IN THE MATTER OF SECTIONS 4, 7, 8, 9 AND 11 OF THE  
FAIR ADMINISTRATIVE ACTIONS ACT, NO. 4 OF 2015**

**AND**

**IN THE MATTER OF SECTIONS ARTICLES 47, 50 (1), 165  
(6) AND 165 (7) OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**



REPUBLIC ..... APPLICANT

AND

PHARMACY & POISONS BOARD ..... RESPONDENT

AND

PRISM LIFE SCIENCES LIMITED ..... INTERESTED PARTY

AND

GALAXY PHARMACEUTICALS LIMITED ..... EX PARTE APPLICANT

## JUDGMENT

1. This judgment determines judicial review application brought under Order 53 of the *Civil Procedure Rules*, the *Fair Administrative Action Act*, 2015, the *Law Reform Act* and Articles 47, 50(1) and 165(7) of the *Constitution*. The Application is by way of Notice of Motion dated 5th May, 2025 seeking the following orders:
  - a. That this Honourable Court be pleased to certify this application as urgent and admit it for inter-partes hearing at the earliest opportune moment;
  - b. That this Honourable Court be pleased to grant an order of Certiorari To bring into this Honourable Court for purposes of being quashed the decision of the Pharmacy and Poisons Board contained in a letter dated 26th March 2025 being notification of intention to cancel registration of Forty (40) health products, a decision based on the Respondent’s Resolution dated 4th March, 2025;
  - c. That this Honourable Court be pleased to grant an order of Prohibition to prohibit the Pharmacy and Poisons Board, the Respondent herein, whether by itself, its agents, employees or whomsoever acting in the name of the Respondent from taking any steps, actions and/or measures to enforce or implement the decision contained in the letter dated 26th March, 2025 written by the Respondents and addressed to the Ex-parte Applicant herein;
  - d. That pending the inter-partes hearing and determination of the Judicial Review Application for orders of Certiorari and Prohibition, this Honourable Court be pleased to stay the intended cancellation of registration of the Ex-parte Applicant’s forty (40) health products;
  - e. That the costs of this application be borne by the Respondent.
2. The application is premised on the grounds on the face of the notice of motion and further supported by the Verifying Affidavit of Jay Hitendra Hirani and the Statutory Statement dated 8th April 2025 filed with the Chamber summons application for leave to apply for judicial review.
3. The applicant also filed a further affidavit in response to the respondent’s and interested party’s replying affidavits.
4. The exparte applicant’s case challenges the Respondent’s decision contained in a letter dated 26th March 2025 being notification of intention to cancel registration of Forty (40) health products. The impugned letter reads:

“Notice of Intention to Cancel Registration of Health Products”.



The letter read thus:

We refer to the above subject.

Following the Board's receipt of a complaint from Prism Life Sciences Ltd regarding alleged substandard/counterfeit/fake pharmaceutical formulations and the product ownership dispute between your company and the said Prism Life Sciences Limited, it has been established that the procedure for variation of the Marketing Authorization Holder (MAH) on the disputed products herein from Prism Life Sciences Limited to your company, vide your request letters dated 12th and 26th April, 2016 was irregular.

Consequently, the Board in accordance with its resolution dated 4th March 2025, hereby notifies your company of its intention to cancel registration of forty (40) health products pursuant to its statutory functions under Section 3B (2) (e) of the [Pharmacy and Poisons Act](#) Cap 244 Laws of Kenya as read together with Section 11 (1) (b) of the [Pharmacy and Poisons \(Registration of Health products and Technologies\) Rules](#), 2022. The pertinent notices for the said products are hereby attached for your reference”.

The above decision shall be effected upon the lapse of Fourteen (14) Days from the date of receipt of this letter.

Yours faithfully,

Dr. F.M. Siyoi

Chief Executive Officer”

5. The aforesaid notice was issued by the Respondent during the pendency of a suit filed before the Commercial Division of the High Court at Nairobi involving the same parties in these proceedings, being Nairobi High Court Commercial Case No. E065 of 2025 ([prism Life Sciences Limited v Galaxy Pharmaceutical Limited And Pharmacy & Poisons Board](#)) where the subject matter involves the disputed ownership of intellectual property rights over several pharmaceutical products, including the products whose registration certificates the Respondent intended to cancel.
6. On 22nd May 2025, while these proceedings were pending, the Respondent wrote yet another letter to the Ex-parte Applicant under the refence “Surrender Of Cancelled Drug Registration Certificates” which letter read as follows:

“We refer to the above subject and the Board's notice as contained in the letter addressed to your company under Ref. PPB/CEO/VOL.39/25, dated 26th March 2025.

Following the lapse of the notice period as issued by the Board in the referenced letter regarding the intended cancellation of the registration of forty (40) health products, you are hereby directed to surrender the registration certificate pertaining to the said health products.

Please note that the affected products, whose list was attached to the notice of cancellation have been removed from the Board's database.

Yours faithfully,

Dr. F.M. Siyoi

Chief Executive Officer”



7. As stated above, the Respondent's letter demanding surrender of cancelled drug registration certificates was written during the pendency of both, the Nairobi High Court [Commercial Case No. E065 of 2025](#) and the present Judicial Review Proceedings.
8. The facts are largely undisputed. The Respondent issued a notice of intention to cancel the registration of various pharmaceutical products, citing grounds including alleged misrepresentation, counterfeit formulations and fraud among other intellectual property violations, following complaints by the interested party manufacturer of the said products. The Applicant, who was a distributor of the said products and agent of the interested party herein, challenged the notice.
9. The Applicant claims that the notice was issued unlawfully and without due process, particularly in view of its position as an agent or distributor of the pharmaceutical products in question. It is also noted that a civil suit is pending before the Commercial Division of the High Court, filed by the patent holders and manufacturers against the Applicant, disputing its entitlement to act in respect of the products and seeking damages for passing off and copyright breaches, among other claims.
10. The application is opposed by both the respondent and the interested party who filed very detailed replying affidavits maintaining that the notices were lawfully issued, giving reasons for the threatened or intended cancellations.
11. As I was busy reading the file and preparing to write the judgment, I observed that the notices for cancellation of the registration certificates have since been actualized as threatened.
12. Importantly, no stay order was granted in this matter, to restrain the respondent from actualizing the threat to cancel the registration certificates.
13. During the pendency of the proceedings, the Respondent cleared some of the drugs/products to be released into the market for sale after tests on the same proved that the products were safe for administration. The respondent then proceeded to cancel the registrations and demanded surrender of the cancelled certificates.
14. This Court notes that the latter facts emerged in the submissions filed by the applicant who did not seek to amend the statutory statement of facts to challenge the cancellation as a separate or subsequent decision. The application remains as initially filed, challenging only the notice of intention to cancel the registration certificates.
15. In other words, there is no pleading on record for this Court to determine the merits of the underlying dispute or the legality of the cancellation itself, which is not the subject of the current application. The only issue the Court can determine, therefore, is whether the application, as it stands, has been overtaken by events, has become moot and non-justiciable.
16. Accordingly, I shall not delve into the detailed responses by the respondent and interested party or their submissions, since the issue that I have raised is fundamental and can on its own, determine the judicial review proceedings herein. The reasons for this is contained in the analysis below.

### **Analysis & Determination**

17. Judicial review proceedings are sui generis and concerned not with the merits of a decision, but with the process by which it was made. The remedy is designed to uphold legality, procedural fairness and rationality in administrative action. However, such proceedings must be founded on a live controversy. The Court cannot act in vain or issue orders in respect of administrative actions that have already been overtaken by subsequent events.



18. The Applicant’s challenge was directed solely at a notice of intention to cancel the registration certificates for the listed 40 pharmaceutical health products, which is the initial preparatory step towards cancellation. While such a notice may be reviewable in appropriate circumstances, the Applicant’s grievance was rooted in the anticipated harm from the implementation of that notice of intention to cancel. To pre-empt such harm, the Applicant sought an order of prohibition. However, no stay was granted by the Court.
19. It is now an undisputed fact that the certificates of registration of the said pharmaceutical health products have been cancelled and therefore that, there having been no order staying the cancellation, the Respondent proceeded to implement the notice and cancel the registration certificates.
20. A new and final administrative action has therefore occurred. Despite this development, the Applicant did not seek leave to amend its statutory statement of facts to introduce the subsequent cancellation decision for consideration by the Court.
21. The legal position is settled that where a decision under challenge has been overtaken by events and no steps have been taken to amend pleadings to reflect the new reality, the Court cannot purport to issue orders on a spent cause of action. The law does not allow a party to litigate one administrative decision and invite the Court to issue orders on another cause of action that is neither pleaded nor supported by affidavit evidence.
22. The rationale behind this position in law is that Judicial review applications are not conducted in a vacuum. If the substratum of the application has been overtaken by events, then the application becomes moot and academic. Similarly, where no leave has been sought or granted to amend the statement or supplement the application to bring in new issues or decisions, the court cannot issue orders in respect of decisions not properly challenged.
23. In the present case, the implementation of the impugned notice through cancellation has transformed the legal landscape and rendered the original challenge to the notice moot and academic. The new decision, the cancellation, has created a new and distinct cause of action, requiring fresh procedural compliance and grounds for review. Judicial review, by its nature, does not allow the introduction of new causes midstream, particularly when no amendment has been made.
24. The *Black’s Law Dictionary*, 9th Edition defines mootness as:

“Having no practical significance; hypothetical or academic (the question on appeal became moot once the parties settled their case).”
25. In *National Assembly of Kenya v Okiya Omtata Okiiti & Another*, CA. No. 53 of 2019, the Court of Appeal expressed itself as follows on the doctrine of mootness:

“By its nature, judicial adjudication concerns itself with resolution of live and concrete disputes, not theoretical propositions or pursuits, however lofty or academically stimulating. The doctrine of mootness, which courts in this jurisdiction have had occasion to apply, stands for the proposition that courts will not decide cases in which there is no longer any actual controversy.”
26. After considering jurisprudence on mootness, the Supreme Court in *Institute for Social Accountability & another v National Assembly & 5 others* [2022] KESC 39 (KLR) stated as follows on the doctrine:

“66 The doctrine of mootness requires that controversy must exist throughout judicial proceedings including at the appellate level. An appeal or an issue is



moot when a decision will not have the effect of resolving a live controversy affecting or potentially affecting the rights of parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. The doctrine of mootness is therefore based on the notion that judicial resources ought to be utilized efficiently and should not be dedicated to an abstract proposition of law and that courts should avoid deciding on matters that are abstract, academic, or hypothetical.”

27. It is also pertinent that the underlying proprietary dispute relating to the pharmaceutical products is the subject of a separate civil suit in the Commercial Division. This reinforces the view that the legal and factual matrix has evolved significantly beyond the scope of the original notice of intention.
28. In view of the foregoing, this Court finds that the judicial review application subject of these proceedings has been overtaken by events and is now moot. The challenge to the notice of intention to cancel the registration certificates no longer presents a live controversy and the Court cannot issue orders in respect of a cause of action that is spent, nor can it issue orders concerning a subsequent administrative action (cancellation of registration certificates and surrender) that is not properly before it.
29. The appropriate course of action, had the Applicant wished to challenge the cancellation, would have been to withdraw the present application and file a fresh judicial review application, properly framed to address the cancellation. Accordingly, the Judicial Review Notice of motion Application dated 5<sup>th</sup> May, 2025 is hereby struck out for mootness.
30. There shall be no order as to costs, in the interest of justice, as the application was overtaken by events.

**DATED, SIGNED & DELIVERED AT NAIROBI VIRTUALLY THIS 15<sup>TH</sup> DAY OF AUGUST 2025**

**R.E. ABURILI**

**JUDGE**

