



Republic v Kenya Civil Aviation Authority (KCCA); Agamu (Ex parte Applicant) (Judicial Review Application E100 of 2025) [2025] KEHC 11923 (KLR) (Judicial Review) (8 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11923 (KLR)

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

JUDICIAL REVIEW APPLICATION E100 OF 2025

RE ABURILI, J

AUGUST 8, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE KENYA CIVIL AVIATION AUTHORITY (KCCA) RESPONDENT

AND

HUMPHREY BULIMU AGAMU EX PARTE APPLICANT

JUDGMENT

1. Pursuant to leave granted on 4th April 2025, the Ex parte Applicant filed the Notice of Motion dated 24th April 2025. The application is brought pursuant to the provisions of Order 53 Rules 3 and 4 of the Civil Procedure Rules. The exparte applicant seeks an order of prohibition prohibiting the Respondent from continuing to renew Licenses under the Civil Aviation (Personnel Licensing) Regulations 2013. He also seeks an order of Mandamus to compel the Respondent to migrate to and/or operationalize the Civil Aviation (Personnel Licensing) Regulations 2018. The exparte applicant also prays for costs of these Judicial Review proceedings to be borne the Respondent.
2. A brief background of the events leading up to the filing of the instant judicial review application as stated by the Applicant is that the Respondent has failed and/or neglected to set in motion the process of renewal of Licences under the Civil Aviation (Personnel Licensing) Regulations 2018. This, is despite a judgment dated 6th December 2022 delivered by the National Civil Aviation Administrative Review Tribunal in Appeal No. E001 of 2022, directing operationalization of the said Regulations.



3. A further Judgment dated 31st October 2024 is said to have been delivered in Civil Appeal No. Appeal No. E009 of 2023 where the Respondent was yet again directed to set in motion the said Regulations. It is asserted that the Respondent continues to enforce the Civil Aviation (Personnel Licensing Regulations) 2013 which according to the Applicant, are now obsolete. The Applicant states that the Respondent has not given any valid reasons and/or legal framework for not migrating to the 2018 Regulations.
4. He argues that he has been denied a source of livelihood by the Respondent which has failed to issue him with a renewal for his Aircraft Maintenance Engineers Licence No. YK-C763, under the 2018 Regulations.
5. The exparte Applicant also filed a further affidavit sworn on 30th May 2025. In the said affidavit, he deposes that the Respondent issued an Advisory circular to guide holders of Aircraft Maintenance Engineers License (AMEL) issued under the Civil Aviation (Personnel Licensing) Regulations 2013 to enable them to transit to the new licensing categories in May 2025, the effective date being the 15th May 2025, which was a date after the filing of these proceedings and after being served with the application subject of this judgment. According to the exparte Applicant, it is therefore insecure for the Respondent to claim to have complied with the new regulations.
6. The exparte Applicant states that vide an email dated 26th May 2025, counsel for the Respondent informed his counsel that he had been advised to apply for the issuance of his license under the 2018 Regulations which he had earlier applied for. That this is despite the Respondent's in-house counsel lying when appearing before the court on 26th May 2025, by informing the court that the Applicant's license had been renewed in line with the 2018 Regulations for the period 20th September 2024 to 19th September 2026.
7. The applicant deposes further that in a circular dated 11th January 2024 through its Director General Emile N. Arao, the Respondent communicated that it had moved all its services and payments to E-citizen, and that in line with the circular, the exparte Applicant initiated his renewal application; however, he was yet to have his license renewed to date, noting that the license renewal under paragraph 20 of the Respondent's Replying Affidavit is under the defunct 2013 Regulations.
8. According to the Applicant, if the Respondent had been implementing the 2018 Regulations, then his license ought to have been renewed within five (5) days as provided by the Respondents' service charter. It is the Applicant's case that for the period of nine (9) years, the Respondent has frustrated him, he has lost a minimum of Kshs.48,600,000/= calculated at Kshs.450,000/= for every month in the 9 years.
9. The Applicant also filed written submissions dated 22nd May 2025 and supplementary submissions dated 30th May 2025 where he reiterates what is already stated in his affidavit.

The Respondent's case

10. In response, the Respondent filed a Replying Affidavit sworn on 22nd May 2025 by Emile N. Arao. The Respondent's case is that contrary to the Applicant's assertions, it has set in motion the process of renewal of Licences under the Civil Aviation (Personal Licensing) Regulations, 2018, as seen in the Aeronautical Information Circular (AIC) 07/23 issued on 24th May 2023 to guide aircraft maintenance personnel, Training Organizations and Approved Maintenance Organizations in ensuring compliance with the Civil Aviation (Personnel Licensing) Regulations 2018.



11. That it issued an Aircraft Maintenance Engineers Logbook which was first published in 2018 and the Second Edition Made in 2023 in line with the 2018 Regulations. The Aircraft Engineers Logbook is said to ensure full implementation of the Regulations.
12. That on 20th May 2025, the Respondent issued another Aeronautical Information Circular (AIC) 06/25 of transitioning to the New Aircraft Maintenance Engineers Licensing System pursuant to the provisions of Section 7 (1) (q) of the *Civil Aviation Act*, CAP 394 and the Civil Aviation (Personnel Licensing) Regulations 2018 and that the same is published in the Respondent's Website and the Previous AIC 07/23 which was issued in 2023 has now been replaced.
13. According to the Respondent, Aviation Law is considered a matter of International Law due to the nature of air travel. That the International Civil Aviation Organization (ICAO) provides general rules and mediates international concerns to an extent regarding aviation law. That the ICAO establishes international standards, recommends practices and procedures (SARPS) covering technical fields of aviation through annexes, and Annex 1 on Personnel Licensing is part of the Standards and Recommended Practices (SARPS) under Chicago Convention that describe the minimum requirement for international aviation as far as Personnel Licensing is concerned.
14. The Respondent refers to Article 12 of the Chicago Convention on compliance of every aircraft with the rules and regulations relating to the flight and manoeuvre of the aircraft therein in force. It also refers to Article 37 of the Chicago Convention on the need for States to ensure the highest practicable degree of uniformity with Standards and Recommended Practices SARPs.
15. It is the Respondent's case that it has been implementing both Annex 1 of the Chicago Convention on Personal Licensing and Civil Aviation Personnel Licensing 2018. Further, that the Applicant's Aircraft Maintenance Engineers License No.YK-C763 was renewed by the Respondent and its valid from 20th September 2024 through to 19th September 2026. That this information was conveyed to the Applicant through a letter dated 18th November 2024 when he was informed to collect his renewed license.
16. The Respondent also filed written submissions in which it argues that the Aeronautical Information Circular (AIC) 06/35 under paragraph 4 provides that licences issued under the Civil Aviation Personnel Regulations 2013 and have not been submitted for re-issue will become invalid on 30th April,2028.
17. It is also submitted that the Respondent has now fully transitioned to the Civil Aviation (Personnel Licensing) Regulations 2018 as evidenced in the Respondent's final Aeronautical Information Circular (AIC) 06/25 of transitioning to New Aircraft Maintenance Engineers Licensing System pursuant to the provisions of Section 7 (1) (q) of the *Civil Aviation Act* and the Civil Aviation (Personnel Licensing) Regulations 2018.
18. The Respondent relies on Sections 107 and 109 of the *Evidence Act* on the burden of proof and the case of *Mbuthia Macharia v Annah Mutua & Another* [2017] eKLR to support the position that he who alleges must prove.

Analysis and Determination

21. I have considered the application, the affidavits on record, the parties' respective submissions both written and oral, the relevant provisions of the *Civil Aviation Act*, the applicable Regulations and international instruments, particularly the Chicago Convention and its Annexes. The main issues for determination are as follows:



- i. Whether the Respondent has failed to implement the Civil Aviation (Personnel Licensing) Regulations 2018;
- ii. Whether the Applicant's license was renewed under the 2018 Regulations;
- iii. Whether the applicant is entitled to the orders of prohibition and mandamus sought;
- iv. Whether the applicant has suffered prejudice warranting redress/ whether the Respondent's actions or omissions amount to an infringement of the Applicant's rights or legitimate expectations;
- v. What orders should the Court issue; including costs, if any?

Whether the Respondent has failed to implement the Civil Aviation (Personnel Licensing) Regulations 2018

19. The Applicant asserts that the Respondent has deliberately refused to operationalize the Civil Aviation (Personnel Licensing) Regulations 2018, despite clear directives from the National Civil Aviation Administrative Review Tribunal in Appeal No. E001 of 2022 and from the High Court in Civil Appeal No. E009 of 2023. According to the Applicant, the continued reliance on the 2013 Regulations has deprived him of a livelihood, as his licence has not been renewed under the applicable law.
20. The Respondent disputes this claim and contends that it has issued various Aeronautical Information Circulars (AICs) notably AIC 07/23 issued on 24th May 2023 and AIC 06/25 issued on 20th May 2025 as steps towards implementing the 2018 Regulations. That it has also published a second edition of the Aircraft Maintenance Engineers Logbook which is aligned to the 2018 Regulations.
21. From the material placed on record, it is clear that the issuance of Aeronautical Information Circulars (AICs) and the Logbook, as well as the statement that licenses issued under the 2013 Regulations will become invalid by 30th April 2028, indicate a phased-out implementation of the 2018 Regulations. While there may have been delays or administrative inconsistencies on the part of the Respondent in operationalizing the said Regulations of 2018, this court is not persuaded that the Respondent has wholly failed or is unwilling to implement the new, 2018 Regulatory Framework.

Whether the *exparte* Applicant's licence was renewed under the 2018 Regulations

22. The parties dispute the renewal status of the *exparte* Applicant's Aircraft Maintenance Engineers Licence No. YK-C763. The Respondent asserts that it was renewed from 20th September 2024 to 19th September 2026 under the 2018 Regulations and that the Applicant was notified by a letter dated 18th November 2024 of this renewal.
23. The Applicant, however, claims that this communication is inconsistent with subsequent emails and court representations made by the Respondent and maintains that he has never physically received the renewed licence. He further states that the process that was followed remains rooted in the 2013 Regulations.
24. There is an apparent inconsistency between the Respondent's official communication and respondent's counsel's representations which casts doubts on the clarity and reliability of the licensing process by the Respondent as it affects the Applicant. Nevertheless, the Respondent has produced a letter and policy instruments indicating a transition effort, and on balance, it is clear that the Applicant's licence was indeed renewed under the 2018 Regulations even if belatedly and with poor communication.



25. In addition, licences, whether issued under the 2013 or 2018 Regulations, remain valid until the end date being 30th April 2028, depending on when the licence was issued, which means that the Applicant is not presently prejudiced in any manner.

Whether the Applicant is entitled to the orders of prohibition and mandamus

26. The court in the case of Kenya Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR) held as follows on the nature of the order of prohibition:

“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It 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 or 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 – See Halsbury’s Law of England, 4th Edition vol.1 at Pg.37 paragraph 128.” When those principles are applied to the present case, the Council obviously has the power or jurisdiction to cancel the results of an examination. The question is how, not whether, that power is to be exercised. If the Council of prohibition would be ineffectual against the conviction because such an order would not quash the conviction. The conviction could be quashed either on an appeal or by an order of certiorari. The point we are making is that an order of prohibition is powerless against a decision which has already been made before such an order is issued. Such an order can only prevent the making of a decision. That, in our understanding, is the efficacy and scope of an order of prohibition.

27. Concerning the order of Mandamus, the same court observed as follows:

“The next issue we must deal with is this: What is the scope and efficacy of an Order Of Mandamus? Once again we turn to Halsbury’s Law Of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says:- “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 and 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.”

At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made 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.”



What do these principles mean? They mean that an order of mandamus will 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.”

28. Thus, as was held by the court in Kenya National Examination Council *supra*, an order of prohibition issues to stop a public authority from continuing an unlawful action, while an order of mandamus compels a public body to perform a duty it is legally obligated to perform. These remedies are discretionary and depend on the existence of a clear and enforceable public duty.
29. In the present case, while it is evident that the Respondent may have delayed in fully transitioning to the 2018 Regulations, thereby exhibiting a degree of administrative inefficiency, this Court notes that steps have since been taken towards the operationalization and implementation of the said Regulations. The Respondent cannot be said to have remained wholly inactive or indifferent in this regard.
30. Moreover, this Court is persuaded by the Respondent’s assertion that the field of Aviation Law falls squarely within the realm of International Law. As such, it is incumbent upon domestic authorities to ensure that national regulatory frameworks are consistent with prevailing international norms, statutes and practices.
31. It must not be lost to this Court that Kenya is a member of the international community and a signatory to various international aviation treaties and conventions. By virtue of Article 2(5) and 2(6) of *the Constitution*, such international instruments form part of the laws of Kenya and are binding upon the State. Accordingly, the alignment of domestic aviation regulations with international standards is not only appropriate but constitutionally mandated.
32. It has not been controverted by the Applicant that the Respondent issued the necessary Aeronautical Information Circular, or that it amended licensing tools such as the Aircraft Maintenance Engineers Logbook and that it even set a sunset clause for the validity of the 2013 licenses.
33. Further, as discerned from the documents annexed to the Respondent’s replying affidavit, specifically, Annexure ‘ENA 6’, being a Certificate of Validity of a Licence for an Aircraft Maintenance Engineer in relation to Licence No. YK-C763, and Annexure ‘ENA 7’, being a letter dated 18th November 2024 addressed to the Applicant confirming that his licence had been renewed and was ready for collection, this Court is satisfied that there exists credible evidence indicating that the Applicant’s licence was, in fact, renewed pursuant to the provisions of the 2018 Regulations.
34. In light of the foregoing, this Court finds that the circumstances do not merit the issuance of an order of prohibition, as the Respondent is not shown to be acting unlawfully at this juncture. Equally, the prayer for an order of mandamus compelling the Respondent to migrate to the 2018 Regulations has been rendered moot by the Respondent’s demonstrated compliance and operationalization of the said Regulations. Granting such an order would therefore serve no useful or practical purpose and would amount to an academic exercise. Accordingly, the reliefs sought are declined.



Whether the applicant has suffered prejudice warranting redress/ whether the Respondent's actions or omissions amount to an infringement of the Applicant's rights or legitimate expectations

35. As stated in the preceding issue, the parameters for judicial review jurisdiction were stated in the Ugandan case of *Pastoli v Kabale District Local Government Council & Others*, (2008) 2 EA 300 where the court observed thus:

“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: See *Council of Civil Service Union v Minister for the Civil Service* [1985] AC 2; and also, *Francis Bahikirwe Muntu and others v Kyambogo University*, High Court, Kampala, miscellaneous application number 643 of 2005 (UR).

“Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances 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 usually in defiance of logic and acceptable moral standards: *Re An Application by Bukoba Gymkhana Club* [1963] EA 478 at page 479 paragraph “E.

“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 act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (*Al-Mehdawi v Secretary of State for the Home Department* [1990] AC 876).”

36. Judicial review is now entrenched as a constitutional remedy pursuant to the provisions of Article 47 of *the Constitution*, which guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. This Article of *the Constitution* of Kenya 2010 was successfully implemented by the enactment of the *Fair Administrative Action Act*. Under section 7 of the Act, any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision.

37. The Court of Appeal in *Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others*, (2016) eKLR stated that:

“Article 47 of *the Constitution* as read with the grounds for review provided by section 7 of the *Fair Administrative Action Act* reveals an implicit shift of judicial review to include aspects of merit review of administrative action, even though the reviewing court has no mandate to substitute its own decision for that of the administrator. Lastly, Article 165(6) of *the Constitution* also provides that this Court has supervisory jurisdiction over any person, body or authority that exercises a quasi-judicial function or a function that is likely to affect a person's rights.”



38. In the case of Republic v National Transport and Safety Authority & 2 others; Kimathi (Exparte) [2025] KEHC 6608 (KLR) the Court observed thus:

“It is trite that judicial review remedies are concerned with the decision-making process of administrative or public bodies rather than the merits of the decision itself. The scope of judicial review is thus limited to assessing whether an administrative or public body acted within its legal mandate, observed the rules of natural justice and adhered to statutory and constitutional procedures.”

39. The Applicant claims to have suffered economic loss of Kshs. 48.6 million, citing a monthly earning potential of Kshs. 450,000 lost over a period of nine years. However, judicial review is not the forum to assess and award damages. Such claims are best ventilated in an ordinary civil suits or constitutional petitions where evidence can be properly adduced and tested.

40. While the Applicant may have legitimate grievances regarding regulatory inefficiencies and possible delays by the Respondent, these do not, on the facts presented, justify the grant of public law remedies sought in this application. At best, they may ground a claim for compensation before the appropriate forum, where there is proof of loss and an appropriate order is sought.

41. In the end, while the Applicant has raised valid concerns about the Respondent’s inconsistent and unclear handling of the licensing process and communication, the evidence on record shows that the Applicant’s licence was renewed and remains valid until 2028. The transition between the 2013 and 2018 Regulations, though poorly handled, does not appear to have resulted in actual prejudice to the Applicant at this time. The grievance, therefore, lacks sufficient practical weight to warrant the grant of judicial review orders.

42. Accordingly, and on what orders this Court should make, including costs if any, I find and hold that the applicant has not made out a case for the judicial review Orders sought. The Notice of Motion dated 24th April 2025 is hereby dismissed.

43. Each party shall bear its own costs.

44. It is so ordered.

45. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF AUGUST 2025

R.E ABURILI

JUDGE

