Republic v Kenya National Examinations Council & 2 others; Khalid Mohamud Ali t/a Amal Secondary School & 5 others (Ex parte Applicants) (Judicial Review E007 of 2025) [2025] KEHC 12436 (KLR) (4 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12436 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

JUDICIAL REVIEW E007 OF 2025

JN ONYIEGO, J

SEPTEMBER 4, 2025

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF MANDAMUS AND CERTIORARI

AND

IN THE MATTER OF FAIR ADMINISTRATION ACTION ACT, 2015

AND

IN THE MATTER OF KENYA NATIONAL EXAMINATION COUNCIL ACT

AND IN THE MATTER OF ARBITRARY DEREGISTRATION OF EXAMINATION CENTRES BY THE KENYA NATIONAL EXAMINATIONS COUNCIL

BETWEEN

REPUBLIC ..... APPLICANT

AND

THE KENYA NATIONAL EXAMINATIONS COUNCIL ..... 1ST RESPONDENT

MINISTRY OF EDUCATION ..... 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL ..... 3RD RESPONDENT

AND

KHALID MOHAMUD ALI T/A AMAL SECONDARY SCHOOL .... EX PARTE APPLICANT

AHMED MOHAMUD ADEN T/A AMA FAFI SECONDARY SCHOOL ..... EX PARTE APPLICANT

GULED HASSAN ALI T/A LAGDERA SECONDARY SCHOOL .... EX PARTE APPLICANT

GARAD MOHAMED SHURIE T/A ALHAMDU SECONDARY SCHOOL ..... EX PARTE APPLICANT

AHMED ABDI MOHAMED T/A MIFTAH SECONDARY SCHOOL ..... EX PARTE APPLICANT

AHMED MOHAMED MUHUMED T/A BARHRAIN SECONDARY SCHOOL ..... EX PARTE APPLICANT

(IN THE MATTER OF ARBITRARY DEREGISTRATION OF EXAMINATION CENTRES BY THE KENYA NATIONAL EXAMINATIONS COUNCIL)

JUDGMENT

1. The ex parte applicants through the firm of Howard & Kenneth Advocates moved this court via Chamber Summons dated 17.07.2025 seeking leave to institute judicial review proceedings in the nature of Mandamus, certiorari and prohibition against the respondents. The court granted leave on 23-7-2025 thus directing that the exparte applicants to file a substantive notice of motion. Consequently, they filed a chamber summons dated 24-7-2025 but later amended on 31-7-2025 to read notice of motion thereby seeking the following reliefs;

    1. An order of certiorari be issued to quash the 1st respondent's decision to deregister all six schools owned by the ex parte applicants separately, which action and or commission was effected on or about the 15.06.2025.

    2. An order of mandamus be issued to compel the 1st respondent to reinstate all the six schools owned by the applicants separately, as examination centres; process candidates' registrations; and thereafter to issue valid written reasons for the unprocedural deregistration within forty-eight hours of the order herein.

    3. An order of prohibition be issued to restrain the 1st respondent from excluding all the registered candidates of the six schools owned by the ex parte applicants separately from 2025 KCSE exams.

    4. Interim orders be issued to preserve all six schools owned by the ex parte applicants separately as examination centres pending determination of the suit herein.

    5. Costs of the application.

    6. Any further orders that this Honourable Court may deem fit to grant.

2. From the statement of facts and verifying affidavits, the ex parte applicants averred that in the month of January, 2025, their six schools underwent the 1st respondent's mandatory prequalification process for Kenya Certificate of Secondary Education, hereinafter KCSE 2025, fulfilling all infrastructural, security, health quality assurance and administrative requirements under the Kenya National Examinations Council. That on or about February, 2025, the 1st respondent formally confirmed the pre-qualification status of all the six schools which action culminated in the issuance of codes that were eventually activated for use to access the 1st respondent's portal.

3. It was averred that having placed reliance on the pre-qualification issued in February 2025, the schools registered 523 candidates for KCSE thus remitting Kes. 2,615,000/- in form of examination fees to the 1st respondent. That on 11th and 12th of June, 2025, individuals purporting to represent the 1st respondent conducted a 'purported inspection' at the said schools leading to deregistration of the same.

4. That on 15.06.2025, the schools received an informal notification of their summary deregistration as examination centres. That on 18.06.2025, the director of AMA Fafi Secondary school personally visited KNEC's offices but was denied access to the inspection report or any discussion on the purported visit.

5. The 1st respondent filed a replying affidavit sworn by Annastacia Nduku Nzomo on 30.07.2025 deponing that the law empowers the 1st respondent to make rules regulating the conduct of examinations and for all purposes incidental thereto. That the 1st respondent reserves the right to combine examination centres for purposes of ease of administration and for security reasons.

6. It was deponed that a circular dated 14.02.2025, on registration for the 2025 KCSE examination to all Principals of Secondary schools presenting candidates for the 2025 KCSE examination, through the Sub County Directors of Education nationwide, indicated that the 1st respondent was in the process of inspecting new institutions that had submitted their applications to be registered as KNEC examination centres for the 2025 KCSE examination. That Feedback on acceptance/non-acceptance of such requests was to be communicated in writing, through the sub County Directors of Education hereinafter, the SCDE's once validation of the requests was complete.

7. It was deposed that, the circular further stated that assessment centres that were to be considered for inspection are those that had submitted the following: a copy of a valid registration certificate from the County director of Education, a certified inspection questionnaire from the SCDE duly filled, a certified inspection questionnaire from the Public Health and Sanitation Department duly filled and a duly filled application form.

8. Equally, the circular communicated that the 1st respondent would conclude the process of inspection of new assessment centres by 28.02.2025 and that the centres that would not have been inspected by the said date would be expected to liaise with their respective SCDE's for identification of approved assessment centres to host their candidates. That the centres in Garissa County were not inspected during this time due to security concerns and therefore, the inspections were done later in June, 2025. That the six centres were among the 20 requests received by the 1st respondent from Garissa County.

9. That the institutions provided documentary evidence to the KNEC officers who had gone to inspect the institutions for scrutiny. It was averred that the evidence was not satisfactory but in the interest of time and ensuring equal access, the 1st respondent resolved to allow the institutions to upload registration data for their 2025 candidates so that they are captured in the Packing List as the 1st respondent prepared for inspection.

10. That a team from the 1st respondent carried out the inspection exercise between 10th and 12th June, 2025 and a report was prepared. From the report, it was established that only three centres were fit while eight centres were not approved to wit that: the institutions found to be existing without approval of the Directorate of Quality Assurance and Standards, Ministry of Education; institutions with inadequate infrastructure that is critical for effective administration of the KCSE examination such as examination rooms, laboratories and furniture for the numbers registered and institutions where no candidates were found in school during the inspection, and there were no record of school attendance as expected in a regular school contrary to the high numbers of candidates presented by the institutions for the KNEC 2025 KCSE examination on the registration database.

11. It was further deponed that, the 1st respondent communicated to the affected SCDE's and feedback to the institutions were enclosed for dissemination through the CDE office by way of individual letters all dated 03.07.2025 and addressed to each of the respective schools being Ama Fafi Secondary School, Amal Secondary School, Al Hamdu Secondary School, Miftah High School, Bahrain Secondary School and Lagdera Secondary School.

12. That the institutions were informed that they could apply for re-inspection as KNEC examination centres upon addressing the non- conformities. In ensuring that the learners don't miss the 2025 KCSE, the 1st respondent engaged the SCDE's through various letters to ensure that the learners are situated in other centres during the administration of the national examinations.

13. That it was agreed that over age learners, that is learners who were 24 years and above, would be transferred to the County Private Centres at Garissa and Dadaab Sub County Private Centre considering security, convenience in terms of distance and logistics; the CDE Garissa, in liaison with SCDE Dadaab and UNCHR (a number of the learners are refugees), would identify suitable centres for the 364 over age learners, in liaison with SCDE Dadaab, from the 11 centres; the centres would summit the lists of all the undeclared refugees for amendment of the KNEC registration database; communication to all the affected examination centres with undeclared repeaters, non-citizens and over age/adults who are yet to communicate their examination fees, were to do so otherwise their results would be pended; and the SCDE for Fafi, Liboi and Dadaab were directed to note the changes in the attached nominal rolls on the hosting of the affected candidates.

14. That the applicants, by their own documentation have admitted that they had not met the minimum requirements set out by the 1st and 2nd respondents that justified their registration status thus justifying the deregistration. It was averred that the decision to deregister the ex parte applicants' schools therefore was not unjust, arbitrary or unfair as claimed by the ex parte applicants but was in line with the Basic Act, KNEC Act ad relevant policies ad circulars.

15. Additionally, that the claim that some candidates have been transferred to centres which are up to 84 kilometers away is manifestly false. That all learners have been transferred with the agreement of the SCDE's and CDE. Further, that since communicating the deregistration to the 6 centres and the reasons wherefore, as well as the letters communicating where the learners have been transferred to, the 1st respondent has received no further complaints from the centres. Thus, the issue of overcrowding, unauthorized transfer, administrative strain is emerging for the first time in this suit and that the 1st respondent is not aware of any such complaints and puts the applicants to strict proof on the same.

16. Mr. Benard Kitui Nanjakululu, the Assistant Director of the Directorate of Quality Assurance and Standards at the Ministry of Education in support of the respondents' case swore a replying affidavit and a further affidavit on 30.07.2025 on behalf of the 2nd respondent thus averring that on 09.06.2025, he was directed by his senior, Ms. Evelyne Owoko, the Director of Quality Assurance and Standards to join the team from KNEC which was travelling to Garissa County to inspect a number of assessment centres. That the team consisted of Anastacia Nzomo, acting director KCSE division, examinations management department; major (rtd) Peter Lotee, Assistant director, security division; Timothy Ngui, KCSE division, examinations management department; Aggrey Owele, security division and Ibrahim Dagane, SCDE Fafi Sub County.

17. He averred that out of the 11 centres inspected, only 3 centres were approved as having met the basic requirements of a KNEC examination centre. That some of the non-conformities were as follows: 8 schools existed without approval of Quality Assurance Standards and had a registration certificate that could not be authenticated; 7 centres did not have basic required infrastructure for the administration

of KCSE examination; all 11 schools had registered very high numbers of candidates for the KCSE examination yet they were in far flung areas; 5 schools had no candidate/learners in the centre at the time of the visit, an indication that they had registered private candidates or ghost candidates; 6 centres, only a few candidates, less than 30 were found in school against the high numbers uploaded on the KNEC registration portal while 6 centres were unable to produce Form 4 attendance registers for candidates and even the list of their teachers.

18. He went further to state that, section 76 of the *Basic Education Act* 2013 requires institutions offering Basic Education and training to be registered by the respective County Education Boards. That the Basic Education Regulations having been enacted in the year 2015, the same were aimed to operationalize the *Basic Education Act*; that the regulations outline the requirements and procedures to be followed in registering institutions of learning. That all institutions must be registered in the manner and form prescribed through the Guidelines for Basic Education Institutions 2011.

19. Ahmed Mohamud Aden in his further affidavit sworn on 30.07.2025 deponed on behalf of the ex parte applicants that the replying affidavits filed by the respondents were unsupported by evidentiary documents. It was further stated that, the ex parte applicants' schools were previously assessed and registered as examination centres following a due quality assurance process conducted jointly by the Ministry of Education and the KNEC. That no evidence of irregularity or deficiency in that original registration was provided. Additionally, that the purported visit was carried during the Idd festivals when ordinarily, school attendances is always slow in the affected region.

20. That in as much as the respondents made a report to and consequently adopted the same, the said report deregistering the affected schools was not shared with the applicants. That specifically, the same was availed to the applicants' counsel on record on 17.07.2025 after the decision to deregister the schools had been made. That the foregoing deprived the ex parte applicants an opportunity to comment or respond or remedy any error that was in existence – if any. To that end, this court was urged to allow the prayers sought.

21. The application was canvassed by way of written submissions.

22. The applicants in their filed submissions dated 30.07.2025 argued in reference to four issues coined for determination as follows:

    i. Whether KNEC's decision to deregister the ex parte applicants' schools violated the right to fair administrative action pursuant to article 47 of *the constitution* and *Fair Administrative Action Act*, 2015.

    ii. Whether the process of inspection and deregistration was procedurally fair, rational and reasonable.

    iii. Whether the impugned action violated the ex parte applicants and learners' constitutional rights to basic education, dignity and protection from arbitrary state action.

    iv. Whether the ex parte applicants are entitled to the judicial remedies of certiorari and mandamus.

23. It was contended that article 47 makes provision for every person to be accorded fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. That section 4(3) of the *Fair Administrative Action Act*, 2015 fortifies this obligation by mandating issuance of a prior notice, adequate reasons for any administrative action taken, the right to be heard and access to materials relied upon prior to taking adverse action.

24. That the 2nd respondent's actions violated these statutory and constitutional requirements noting that the purported inspection conducted between 10th and 12th June, 2025 did not give the ex parte applicants a meaningful notice to be heard. To that end, counsel relied on the cases of Nancy Nyaguthii Gachewa vs Kenya National Examinations Council & 3 Others [2019] eKLR Judicial Review No. 35 of 2018 where Ogola J. quashed KNEC's deregistration of a school as an examination centre for want of procedural fairness. The court went further to state that:

> '...the issue this court must address is whether the ex parte applicant, who was already enjoying the status as an examination centre, was given any notice that the said status would be revoked...it is clear that the late service was intentional, so as to deprive the ex parte applicant of the right to appeal the decision...thereby leaving recourse to those proceedings as the only option and hope for the ex parte applicant.'

25. In the same breadth, reliance was placed on the case of Republic vs County Director of Education, Nairobi & 4 Others ex parte Abdikadir Elmi Robleh [2018] eKLR where Odunga J. (as he was then) dealt with the unlawful deregistration of schools as examination centres without prior notice, hearing or adequate reasons.

26. It was argued that the alleged inspection was cursory in nature as the inspection report was withheld and consequently executed without the engagement of the ex parte applicants.

27. Learned counsel urged that procedural fairness is the very foundation of an administrative justice. Further relying on the case of Nancy Nyaguthii Gachewa vs Kenya National Examinations Council & 3 Others (supra), counsel urged that the omission, deprivation of the ex parte applicants' due right as provided under section 4(3) makes the whole act of deregistering the schools ultra vires.

28. It was further contended that the rights of the 523 learners have directly been violated contrary to article 53(1) (b) of *the constitution*. That the impugned decision has caused displacement and deep anxiety amongst the students. Further, counsel sought comfort in the case of Nancy Nyaguthii Gachewa vs Kenya National Examinations Council & 3 Others (supra) where it was held that:

> ''That means that the starting point in this matter is that the ex parte applicant was already enjoying the status of an examination centre. That the status could be taken away ...only in the event that the ex parte applicant breached the relevant regulations...one should also ask why these shortcomings were not detected before the status was granted in the first place".

29. That the rushed and opaque process by the 1st respondent, uncovered forensically in the present record, exposes a series of rights violations and an abdication of the respondent's constitutional duty to act in the best interest of the child as provided under article 53(2) of *the constitution*.

30. Additionally, it was urged that whenever an administrative body acts inconsistently with constitutional and statutory requirements for fair process, the High Court will not hesitate to quash the decision and issue orders compelling restoration of status. This court was therefore urged to find that indeed the respondents acted ultra vires and as such, issue the orders sought herein.

31. On the other hand, the respondents in their submissions dated 31.07.2025, cited two issues for determination:

    i. Whether the applicants have locus standi before the court.

    ii. Whether the applicants are entitled to the reliefs sought.

32. On the first issue, counsel urged that the ex parte applicants have no locus to institute the suit herein for the reason that the same ought to have been brought by the board of management of the schools as envisaged under section 55 of the *Basic Education Act*. Equally, that the ex parte applicants possess certificates that have since expired and therefore, Lagdera, Amal and Miftah schools are not legal entities recognized in law. To that end, reliance was placed in the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000 where the court held that:

> " Locus standi signifies a right to be heard; a person must have sufficiency of interest to sustain his standing to sue in court of law."

33. On whether the reliefs sought ought to issue, counsel urged that the ex parte applicants clearly demonstrated in their bundles of documents annexed herein showing that they have not met the minimum standards as required for registration as examination centres not to mention basic education institutions. That the decision to deregister the schools was not therefore unjust, arbitrary or unfair as claimed by the ex parte applicants but was in line with the law. Additionally, that all the learners have been transferred to nearby centres as discussed and agreed with the respective SCDE's and therefore, no learner will miss sitting the 2025 KCSE exams.

34. It was urged that the allegation by the applicants that they invested lots of money in the respective schools is unfounded as education, just like any other business, requires that those intending to invest in the sector must meet minimum requirements as set out by the 2nd respondent. That should the investors fail to meet these minimums, then they are required to be deregistered. It was stated that the minimum standards as set out by the 2nd respondent are meant to safeguard and protect children and ensure that they learn in a properly regulated and conducive safe environment.

35. In regards to the prayers sought herein, it was argued that the orders are undeserving noting that, just like any other business, running of a school requires that an investor must meet minimum requirements as set out by the 2nd respondent. That should the investors fail to meet these minimums, then they are required to be deregistered. It was stated that the minimum standards as set out by the 2nd respondent are meant to safeguard and protect children and ensure that they learn in a properly regulated ad conducive safe environment.

Analysis and determination

36. I have considered the application before me, the reply thereof and submissions by both parties. The only issues for determination are whether the ex parte applicants have met the threshold for grant of judicial orders as sought and whether the exparte applicants have locus to sue.

37. However, before I consider the substantive issues, the issue of locus has been raised by the respondents to wit that the ex parte applicants lacked the requisite locus to present this matter before this court.

38. The meaning of the term locus standi was determined in the case of Daykio Plantations Limited v National Bank of Kenya Limited & 2 others [2019] eKLR as follows:

> " ...In the case of Law Society of Kenya v Commissioner of Lands & others, Nakuru High Court Civil Case No 464 of 2000, the Court held that; - "locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law".

39. Further in the case of Alfred Njau and others vs City Council of Nairobi (1982) KAR 229, the Court also held that; - "the term locus standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that, he has no right to appear or be heard in such and such proceedings". It is therefore evident that locus standi is the right to appear and be heard in Court or other proceedings and literally, it means 'a place of standing'..."

40. Article 22(1) of *the Constitution* provides that:

    1. Every person has a right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.

    2. In addition to a person acting in their own interest, Court proceedings under clause (1) may be instituted by-

        a. a person acting on behalf of another person who cannot act in their own name;

        b. a person acting as a member of, or in the interest of, a group or class of persons;

        c. a person acting in the public interest; or

        d. an association acting in the interest of one or more of its members.

41. My reading of article 22 of *the constitution* informs me that any 'person' is allowed to bring a suit before the court for hearing if that party is of the view that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed. Among the remedies that can issue in any allegation of breach of any constitutional right is judicial review orders pursuant to Article 23(3) of *the constitution*.

42. In the instant case, the applicants urged that the rights of the 523 learners herein had been directly violated by the 1st respondent's arbitrary act contrary to article 53(1) (b) of *the constitution*. It was argued that noting the actions of the 1st respondent, the said learners were to be relocated in different schools and the ex parte applicants' schools deregistered. The applicants herein are arguing that they were not given reasonable notice nor audience before the arbitrary deregistration of the examination centres. From the foregoing, it is my belief coupled with the fact that this court exists to do justice, hearing of the applicants' case would be the best option.

43. Needless to say that Article 22 of *the constitution* above quoted, has broadened locus to sue. In the instant case, the managers or operators of the school can sue for or on behalf of the affected schools as a class of interested groups or persons hence properly have locus to seek the orders sought.

44. As regards whether the orders sought can issue, the exparte applicants are duty bound to establish a primafacie case that the act complained of is procedurally improper or irrational; unfair; or illegal; See Pastoli vs Kabale District Local Government Council and Others (2008)2EA300 where the court held "that 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 or procedural impropriety".

45. It is trite that whether to grant a judicial review order or not is a matter of discretion by the court depending on the circumstances of each case. See Cabinet Secretary Ministry of Mining & another v National Environment Management Authority & 3 others Exparte cortex Mining Kenya Ltd Nairobi High Court Judicial Review Misc. Application No. 298 of 2013

45. The grounds upon which judicial review orders can be granted were further explained in the case of Council of Civil Service Unions versus Minister for the Civil Service (1985) A.C. 374,410; where Lord Diplock spoke of these grounds as follows:

> ''My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review.
>
> "The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.
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> "By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
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> "By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.
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> "I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all."

46. In Kenya Human Rights Commission v Non-Governmental Organizations Co-ordination Board [2016] eKLR the learned Judge expressed himself, inter alia, as follows:

> " a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as

well as reasons for the adverse administrative action as provided under Article 47 (2) of *the Constitution*. Generally, one expects that all the precepts of natural justice are to be observed before a decision affecting his substantive rights or interest is reached".

47. The principle of legality dictates that every administrative act of government must be anchored in law.

48. In Republic v Cabinet Secretary, Ministry of Interior and Co-ordination of National Government & 2others Ex- parte Paresh Kamlakar Naik & another [2018] eKLR the court had this to say;

> " An administrative decision is flawed if it is illegal. A decision is illegal if it:-(a) contravenes or exceeds the terms of the power which authorizes the making of the decision; (b) pursues an objective other than that for which the power to make the decision was conferred; (c) is not authorized by any power; (d) contravenes or fails to implement a public duty."

49. Section 7 of the *Fair Administrative Action Act*, 2015 provides for the institution of judicial review proceedings as follows: -

(1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to–

(a) A court in accordance with section 8; or

(b) A tribunal in exercise of its jurisdiction conferred in that regard under any written law.

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if–

(a) The person who made the decision–

(i) Was not authorized to do so by the empowering provision;

(ii) Acted in excess of jurisdiction or power conferred under any written law;

(iii) Acted pursuant to delegated power in contravention of any law prohibiting such delegation;

(iv) Was biased or may reasonably be suspected of bias; or

(v) Denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;

(b) A mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

(c) The action or decision was procedurally unfair;

(d) The action or decision was materially influenced by an error of law;

(e) The administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;

(f) The administrator failed to take into account relevant considerations;

(g) The administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;

(h) The administrative action or decision was made in bad faith;

(i) The administrative action or decision is not rationally connected to–

(i) The purpose for which it was taken;

(ii) The purpose of the empowering provision;

iii. The information before the administrator; or

(iv) The reasons given for it by the administrator;

(j) There was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;

k) The administrative action or decision is unreasonable;

(l) The administrative action or decision is not proportionate to the interests or rights affected;

(m) The administrative action or decision violates the legitimate expectations of the person to whom it relates;

(n) The administrative action or decision is unfair; or

(o) The administrative action or decision is taken or made in abuse of power.

(3) The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that–

a. The administrator is under duty to act in relation to the matter in issue;

b. The action is required to be undertaken within a period specified under such law;

c. The administrator has refused, failed or neglected to take action within the prescribed period."

50. Section 11 provides for orders in proceedings for judicial review as follows: -

"(1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order–

a. Declaring the rights of the parties in respect of any matter to which the administrative action relates;

b. Restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;

c. Directing the administrator to give reasons for the administrative action or decision taken by the administrator;

d. Prohibiting the administrator from acting in a particular manner;

e. Setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

f. Compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;

g. Prohibiting the administrator from acting in a particular manner;

h. Setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;

i. Granting a temporary interdict or other temporary relief; or

j. For the award of costs or other pecuniary compensation in appropriate cases."

51. In Saisi & 7 others v Director of Public Prosecutions & 2 others (Petition 39 & 40 of 2019 (Consolidated)) [2023] KESC 6 (KLR) the Supreme court held as follows:

> " In order for the court to get through this extensive examination of section 7 of the FAAA, there must be some measure of merit analysis. That is not to say that the court must embark on merit review of all the evidence. For instance, how would a court determine whether a body exercising quasi-judicial authority acted reasonably and fairly "in the circumstances of the case", without examining those circumstances and measuring them against what is reasonable or fair, and arriving at the conclusion that the action taken was within or outside the range of reasonable responses. However, it is our considered opinion that it should be limited to the examination of uncontroverted evidence. The controverted evidence is best addressed by the person, body or authority in charge. To borrow the words of the Court of Appeal in Judicial Service Commission & another v Lucy Muthoni Njora, Civil Appeal 486 of 2019; [2021] eKLR there is nothing doctrinally or legally wrong about a judge adopting some measure of review, examination, or analysis of the merits in a judicial review case in order to arrive at the justice of the matter. Rather a failure to do so, out of a misconception that judicial review is limited to a dry or formalistic examination of the process only leads to intolerable superficiality. This would certainly be against article 259 of *the Constitution* which requires us to interpret it in a manner that inter alia advances the rule of law, permits the development of the law and contributes to good governance.".

52. The crux of the matter herein is the respondents' alleged abrupt deregistration of the exparte applicants' schools without the necessary notice nor formal explanation or sufficient reason for the deregistration. The exparte applicants do not dispute that the respondents did an inspection of their schools. Their major contestation is the unprocedural manner in which it was done without taking into account the immense consequences their action would cause both to the learners and the owners.

53. On the other hand, the respondents are alleging that each school is bound by the *basic education Act* 2013 and the attendant regulations thereof issued in 2015. That the *basic education Act* section 64 does mandate the department of quality assurance to set operational guidelines for school. They argued that clause 7.0 of the guidelines provides for grounds upon which basic education institutions can be deregistered.

54. Further, the respondents contended that like any other investment the schools are supposed to be compliant with the registration conditions at all times.

55. The respondents stated that notice for inspection was issued way back in February 2025 but could not be undertaken due prevailing insecurity hence delayed till June 2025. There is no proof that notice was issued to the affected schools. In the absence of proof of service of notice for inspection, the impugned inspection was abrupt. The exparte applicants averred that in January 2025, their schools underwent the mandatory pre-qualification process for KCSE 2025. That in February 2025, re-inspection was again done and certificates issued. They annexed the requisite certificates to that effect.

56. The key question is, was notice necessary? Was the inspection procedure lawful. Having been assessed and found to be qualified and then allocated a portal for registration of candidates and payment of examination fees for KCSE examination 2025 implies, that a subsequent notice for further inspection would have been issued.

57. For the reason that the respondents abruptly visited the said schools on 12-06-2025 without notice is a breach of article 47 of *the constitution* on the right to fair administrative action and section 4 of the *Fair Administrative Action Act* which provides that;

> " Administrative action to be taken expeditiously, efficiently, lawfully etc.
>
> (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
>
> (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
>
> (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;
>
> (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.

58. Whereas the law provides for guidelines which owners of basic education institutions should adhere to, the principles of natural justice demands that before any adverse action is taken by any public officer or public institution, the affected party must be heard. With the advent of the 2010 constitution and the *Fair Administrative Action Act*, surprise or decision by ambush came to an end. By all means, the respondents have a duty to administer schools in a fair manner to ensure quality education for our children. However, there must be due process in the course of execution of that mandate.

59. It is not the duty of the court to micro manage the role of independent government departments but to intervene where there is non-compliance with the law. SeeKenya Youth Parliament & 2 Others v AG & Another, Constitutional Petition No. 101 of 2011, where the court stated that:

> " We state here with certain affirmation, that in an appropriate case, each case depending on its own peculiar circumstances, facts and evidence, this court clothed with jurisdiction as earlier stated, would not hesitate to nullify and revoke an appointment that violates the spirit and letter of *the Constitution* but the Court will hesitate to enter into the arena of merit review of a constitutionally mandated function by another organ of State that has proceeded with due regard to procedure. The Court's intervention would of necessity be pursuant to a high threshold."

60. Having assessed and pre-qualified the exparte applicant's schools as examination centres and the schools having registered candidates, there was legitimate expectation that the candidates were to sit their exams in their registered centres to avoid any inconvenience.

61. The next question is, was the decision taken rational. Considering that the the registration centres were deregistered on 15-6-2025 four months to the administration of exams, was it reasonable. The timing was in my view wrong. The decision is interfering with the running process of the students who were distributed to other schools which were not prepared to receive them. This position was affirmed by the letter of the sub-county director of education Fafi dated 18-06-2025 addressed to the 1st respondent (annexture A-9) complaining that the deregistration exercise did not consider; centre capacity; distance and accessibility; challenges especially during seasonal rains; insecurity; infrastructure and staffing; school type and demographics and stake holder engagements.

62. It is a constitutional imperative under article 53 (2) of *the constitution* that a child's best interest is of paramount importance when making a decision in every matter concerning a child. See KKPM v SWW [2019] KEHC 10362 (KLR).

63. It is clear from the sub-county director that the 1st respondent's decision is punitive to and against the child both socially, psychologically and economically because of relocation to other schools hence long distance to be covered, insecure, psychologically and emotionally torturous. Why disrupt children when exams are nearing yet there was sufficient time from January 2025? Obviously, the decision was irrational in the circumstances and against the best interest of a child. In the circumstances therefore, the respondents' action cannot override the best interest of the children.

64. On the question whether the exparte applicants were given reasons for deregistration, the answer is yes. This is demonstrated by the inspection report. The question however is whether, they were given an opportunity to be heard which is a critical component of natural justice. According to the 1st respondent, when they visited the schools, they inspected and deregistered them. Among the reasons given was that, some schools had no students.

65. The exparte applicants justified their absence on grounds that they were observing Ramadhan celebrations. Had the exparte applicants been given a chance, they would have given that explanation. The right to be heard is inalienable and is a constitutional requirement. For those reasons, the decision made by the 1st respondent was unconstitutional and contrary to the principles of natural justice on the right to be heard.

66. Concerning the issue on lack of public participation or engagement, it was not necessary as the inspection exercise is already anchored in law hence requiring compliance after due process.

67. Having held as above, it is my finding that the exparte applicants have met the threshold for grant of the orders sought; Accordingly, I am inclined to order as follows'

1. An order of certiorari be and is hereby issued quashing the 1st respondent's decision to deregister all six schools owned by the ex parte applicants separately, which action and or commission was effected on or about the 15.06.2025.

2. An order of mandamus be and is hereby issued compelling the 1st respondent to reinstate all the six schools owned by the applicants separately, as examination centres; process candidates' registrations; and thereafter grant the exparte applicants an opportunity to respond to issues raised in the inspection report.

3. An order of prohibition be and is hereby issued restraining the 1st respondent from excluding all the registered candidates of the six schools owned by the ex parte applicants' separately from 2025 KCSE exams.

4. Each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF SEPTEMBER 2025

J.N.ONYIEGO

JUDGE