

***Stare Decisis* vs. High Court Supervision: Textual Precision Under Article 163(7) and Article 165(6)**

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A central point of friction in Kenyan administrative law concerns the relationship between **Independent Tribunals** and judicial precedents rendered by superior courts. Litigants and regulatory bodies frequently assume that because superior courts issue binding rulings across the judicial branch, independent tribunals operate as lower trial courts strictly bound by the traditional doctrine of *stare decisis*.

A precise textual analysis of the Constitution of Kenya 2010 dispels this assumption: while independent tribunals are **not textually bound** by Supreme Court precedents under **Article 163(7)**, they remain fully accountable to the High Court through its supervisory jurisdiction under **Article 165(6) & (7)**.

PRECEDENT & SUPERVISION ARCHITECTURE	
CONSTITUTION OF KENYA 2010	
ARTICLE 163(7) STARE DECISIS	ARTICLE 165(6)
Applies Strictly to “Courts” (Judiciary Branch under Chapter 10)	High Court Supervisory Oversight
Independent Tribunals consider superior court rulings as HIGHLY PERSUASIVE Public Law	Certiorari, Mandamus & Prohibition Prerogative Review Orders

The Textual Scope of Judicial Precedent: Article 163(7)

The constitutional engine of *stare decisis* in Kenya is framed in mandatory textual terms under Chapter 10:

"All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court."
(Article 163(7))

THE JUDICIARY BRANCH BOUNDARY	
CHAPTER 10 COURTS	INDEPENDENT TRIBUNALS
* Superior Courts (Supreme, Appeal, High Court) * Subordinate Courts & Local Tribunals (Art. 169(1)(d)) * STRICTLY BOUND BY STARE DECISIS	* Article 1(3)(c) State Organs * Operates Outside Chapter 10 * Textually Excluded from Art. 163(7) Strict Mandate * HIGHLY PERSUASIVE PUBLIC LAW AUTHORITY

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The textual design of this provision is deliberate:

1. **Explicit Limit to "Courts":** Article 163(7) explicitly governs "courts".
2. **The Sectoral Divide:** Local tribunals established under **Article 169(1)(d)** are explicitly classified as subordinate courts within Chapter 10, placing them within the strict mandatory grip of Article 163(7).
3. **Independent Tribunal Exemption:** Independent tribunals established **BY** the Constitution (ad hoc removal panels under Articles 144, 168, and 251) or **UNDER** the Constitution via Section 2 of the Fair Administrative Action Act (FAAA) operate outside Chapter 10 as distinct State organs. Consequently, they are not textually bound by the automatic statutory mechanics of Article 163(7).

Highly Persuasive Authority in Public Law

While independent tribunals are not textually constrained by Article 163(7), this does not mean they act as unguided or arbitrary panels.

Instead, independent tribunals consider superior court rulings as **highly persuasive public law authority**. Incorporating superior court reasoning maintains legal predictability, respects institutional coherence, and ensures that final determinations withstand supervisory scrutiny. Treating court holdings as persuasive rather than textually mandatory respects the precise wording of Article 163(7) while safeguarding administrative efficiency.

Accountability: High Court Supervisory Jurisdiction (Article 165(6) & (7))

The constitutional guarantee against tribunal overreach is established through the High Court's supervisory mandate under **Article 165(6)**:

"The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court."

HIGH COURT SUPERVISORY PREROGATIVE ORDERS
1. ORDER OF CERTIORARI (Section 11 FAAA) Quashes illegal, irrational, or procedurally improper tribunal determinations.
2. ORDER OF MANDAMUS (Section 11 FAAA) Compels a tribunal or registry official to perform a mandatory public or statutory duty.
3. ORDER OF PROHIBITION (Section 11 FAAA) Prevents a tribunal from acting excess of its jurisdiction or violating natural justice.

Under **Article 165(7)**, the High Court may call for the record of any tribunal proceeding and issue prerogative orders (Certiorari, Mandamus, Prohibition) or grant judicial review remedies under **Section 11 of the Fair Administrative Action Act** to enforce compliance with Article 47 procedural fairness.

Comparative Synthesis: Courts vs. Independent Tribunals

Operational Feature	Subordinate Courts & Local Tribunals	Independent Tribunals (AITAR/AISTAR/AIETAR)
Constitutional Sector	Judiciary Branch (Chapter 10)	Independent Tribunals Sector (Art. 47 & FAAA)
Precedent Standard	Strictly BOUND under Article 163(7) [cite: 7]	HIGHLY PERSUASIVE Public Law Authority [cite: 7]
Supervisory Oversight	Subject to High Court Appeals & JSC Admin	Subject to High Court Judicial Review (Art. 165(6))
Primary Statutory Base	Civil / Criminal Procedure Codes & Judicature Act	Fair Administrative Action Act, 2015 (ss. 2 & 4)
Remedial Execution	Court Decrees & Execution Warrants	Registry-Ready Determinations (LSA s. 45(1))