



**Shwashwa & another (Voi Liquor Business Owners Community Based Organisation
- Suing through its officials) v Voi Sub-County Police Commander & 5 others;
County Government of Taita-Taveta (Interested Party) (Constitutional
Petition E002 of 2024) [2024] KEHC 10335 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CONSTITUTIONAL PETITION E002 OF 2024**

GMA DULU, J

JULY 31, 2024

**IN THE MATTER OF: ARTICLES 2, 3, 10, 20, 21,
22, 23, 24, 27, 47 & 165 OF THE CONSTITUTION**

AND

**IN THE MATTER OF: RULE 10(1) AND 23 OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

CAROLINE SHWASHWA 1ST PETITIONER

CHRISTOPHER MWAWASI 2ND PETITIONER

**VOI LIQUOR BUSINESS OWNERS COMMUNITY BASED ORGANISATION -
SUING THROUGH ITS OFFICIALS**

AND

VOI SUB-COUNTY POLICE COMMANDER 1ST RESPONDENT

VOI SUB-COUNTY DEPUTY COUNTY COMMISSIONER .. 2ND RESPONDENT

OFFICER COMMANDING VOI POLICE STATION 3RD RESPONDENT

TAITA-TAVETA COUNTY COMMISSIONER 4TH RESPONDENT

TAITA-TAVETA COUNTY POLICE COMMANDER 5TH RESPONDENT

THE HON ATTORNEY GENERAL 6TH RESPONDENT

AND



THE COUNTY GOVERNMENT OF TAITA-TAVETA INTERESTED PARTY

RULING

1. Before me is a Notice of Motion dated 21st March 2024 filed under Articles 2, 3, 10, 20, 21, 22, 23, 24, 27, 47 & 165 of *the Constitution* and Rule 10(1) and 23 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 through counsel John Bwire & Associates.
2. The application was filed following the filing of a petition, and seeks the following orders:-
 - a. (Spent).
 - b. (Spent).
 - c. (Spent).
 - d. That pending the hearing and determination of the petition or until further orders of the court, a conservatory order be issued restraining the respondents either by themselves or by their officers from enforcing the impugned directives by the Cabinet Secretary, Ministry of Interior & Coordination of National Government given on 6th March 2024 for closure of all bars within the residential areas and further directive by the Deputy President on 19th March 2024 that all bars in Kenya operate from 5p.m to 11 p.m.
 - e. That pending the hearing and determination of the petition or until further orders of the court, a conservatory order be issued restraining the respondents from closing or interfering with the smooth operation of bars and entertainment joints with valid licences or permits from the interested party.
 - f. That costs of the application be provided for
3. The application has grounds on the face of the Notice of Motion that on 6th March 2024 the Cabinet Secretary for Interior and Coordination of National Government issued directives, to all county police commanders and county commissioners for closure of bars and entertainment places within residential areas; that on 19th March 2024 the Deputy President issued another directive that all bars in Kenya shall open at 5p.m and close at 11p.m; that the directives are not supported by any applicable law; and that the petitioner's members are licenced by the Taita Taveta County Government under the County *Alcoholic Drinks Control Act* 2016.
4. The application was filed with a supporting affidavit sworn on 21st March 2024 by Patience Lugo Advocate for the petitioner, which amplified the grounds of the application.
5. The application was opposed through a replying affidavit sworn on 30th April 2024 by Sadiq Willian the County Police Commander Taita Taveta County in which it was deponed that the closure of the bars arose from a security meeting and physical inspection of alcoholic selling premises, and that a number of premises had by that time in March 2024 not been issued with liquor licences, or had fake documents or were not compliant with the *Public Health Act* requirements, and thus the premises were closed; and that the police had powers under Section 51 of the Police Service Act to take the action they took.



6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by John Bwire & Associates Advocates for the applicant, as well as the submissions filed by the Attorney General for the respondents.
7. This being an application for grant of interim conservatory orders, I have to be guided by the principles stated by the Supreme Court in the case of *Gatirau Peter Munya =Versus= Dickson Mwenda Kithinji & 2 Others (2014) eKLR*, relied upon by counsel on both sides, in which *Ojwang & Wanjala JJSC*, stated at paragraph 86 as follows:-

“Conservatory orders bear a more decidedly public connotation; for these are orders to facilitate ordered functioning within public agencies as well as uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not unlike interlocutory injunctions linked to such private party issues as the prospects of irreparable harm occurring during the pendency of a case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”
8. In the present case, though the Taita-Taveta County Government was named as an interested party, it neither filed a response nor participated in the application.
9. The said interested party, is the institution which would confirm whether it had issued licences, and in what context, because it is the institution vested with the statutory powers to issue liquor licences.
10. Granted that the respondents as officials of the National Government, have a duty to protect the public interest in as far as operation of bars and entertainment premises in Kenya are concerned, it will be important for this court to know the detailed particular facts and circumstances of this matter, before making a substantive decision in the pending petition. It is not possible to get such details at the present preliminary stage.
11. In my view, with the facts and evidence disclosed to me at this preliminary stage and balancing the public interest and constitutional rights and duties of the parties involved, I find that the applicant/petitioner, has demonstrated a basis for grant of interim conservatory orders, pending the substantive hearing and determination of the petition.
12. Consequently and for the above reasons, I allow the Notice of Motion and order as follows:-
 1. Pending the hearing and determination of the petition herein, a conservatory order is hereby issued restraining the respondents either by themselves or their officers from enforcing the impugned directives by the Cabinet Secretary Ministry of Interior Coordination of National Government given on 6th March 2024 for the closure of all bars within residential areas and further directive by the Deputy President on 19th March 2024 that all bars in Kenya operate from 5p.m to 11p.m as relates to members of Voi Liquor Business Owners Community Based Organization (the petitioner) in Taita-Taveta County.
 2. That pending the hearing and determination of the petition or until further orders of this court, a conservatory order is hereby issued restraining the respondents from closing or interfering with the smooth operation of bars and entertainment joints with valid licences or permits issued by the Interested Party – County Government of Taita Taveta.
 3. The costs of the application will abide the determination of the petition herein.



DATED, SIGNED AND DELIVERED THIS 31ST DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Griffins Timbe for petitioner/applicant

No appearance for respondents

No appearance for interested party

