



**Kariuki t/a Club Lakeview & Lounge v Kabete Subcounty Acoholics Drinks  
Regulatory Committee & another (Judicial Review Miscellaneous Application  
E003 of 2023) [2024] KEHC 10664 (KLR) (16 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10664 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E003 OF 2023  
DO CHEPKWONY, J  
AUGUST 16, 2024**

**BETWEEN**

**GEOFFREY KAMAU KARIUKI T/A CLUB LAKEVIEW &  
LOUNGE ..... APPLICANT**

**AND**

**KABETE SUBCOUNTY ACOHOLICS DRINKS REGULATORY  
COMMITTEE ..... 1<sup>ST</sup> RESPONDENT  
DRINKS APPEALS COMMITTEE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is before this court for determination is the Chamber Summons application dated 15<sup>th</sup> August, 2023 which seeks the following orders:
  - a. Spent.
  - b. That the Applicant be granted leave to commence judicial Review proceedings for an Order for Certiorari quashing the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents denying the Applicant’s application for an Alcoholic and Liquor License for the year 2023.
  - c. The Applicant be granted leave to apply for an Order of Certiorari to quash the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents denying the Applicant’s application for an Alcoholic and Liquor License for the year 2023.
  - d. That the applicant be granted leave to apply for an order of Injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents whether by itself, servants or agents or whosoever otherwise including from arresting, bullying and intimidating the Applicant when operating his business.



- e. That the applicant be granted leave to apply for an order of Prohibition to prohibit the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from closing the Applicant's business for the year 2023.
- f. That the applicant be granted leave to apply for an order of Mandamus directed to the 1<sup>st</sup> Respondent to issue the Applicant with Alcoholic and Liquor License for the year 2023.
- g. The Applicant be granted leave to apply for an order of Prohibition to prohibit the County Commander, Kiambu County, OCPD Kikuyu Police Station and other police officers within the same jurisdiction from arresting, harassing or intimidating the applicant while operating the business.
- h. That leave granted do operate as stay of enforcement of the decision(s) of the Respondent to deny the Applicant's application for Alcoholic and Liquor License for the year 2023.
- i. That costs of this application be provided for.

### **The Applicant's case.**

2. It is the Applicant case that he owns an establishment in Club Lakeview & Lounge situated in Zambezi, Kabete Sub County in Kiambu County and thus has been since the year 1989 after inheriting the same from his late father. He claims that he has been running the establishment in line with the provisions of Kiambu County Alcoholics Drinks Control Act and other subsequent rules, regulations or legislation.
3. The Applicant contends that when he made an application for renewal of the said license, he received a letter dated 19<sup>th</sup> May 2023 which indicated that his application for renewal had not been approved since the business was located in a residential area. Being aggrieved by the decision of the 1<sup>st</sup> Respondent, the Applicant appealed to the 2<sup>nd</sup> Respondent which appear to renew the appeal was also denied for reason that his business had been running for many years and it was located in a residential area and yet he did not have an occupation certificate for his bar.
4. The Applicant holds that the business is his only source of income and since it has remained closed this has caused him mental anguish as he is not in a position to service the loan facility at Kenya Commercial Bank and fend for his family. The Applicant has thus urged the court to allow the application as prayed.

### **The Respondent's case.**

5. In response, the Respondent opposed the application through the Replying Affidavit sworn by Michael Kangethe as the County Director Alcoholics Drink Control on 11<sup>th</sup> October, 2023. It is the Respondent's case that the Applicant applied for renewal of his liquor license for the year 2023. The applicant states that the renewal of the license is not automatic as there must be compliance with laws and procedure in line with Section 23 (7) (a) of *the constitution* which states, '... notwithstanding the provisions of this act, the Sub County committee shall only recommend the renewal of a license to a person who has satisfied the requirements of this Act.
6. The Respondent holds that the Applicant had not met the requirements for the renewal of the said licence because when the Committee visited, it noted that the business premises had been undertaken at a basement hence it had poor ventilation which was limiting flow of air circulation and the Applicant was advised to relocate as the premises was posing danger in case of a fire outbreak for lack of an escape route. It was further deponed that the County Alcoholic Drink Appeal's Committee had upheld the decision of the Sub County Alcoholic Drinks Regulation Committee.
7. The Respondent also states that the Applicant has not provided this court with cogent reasons to warrant any interference whatsoever with the decision passed by the County Alcoholic Drinks Appeal



Committee. He thus holds that the application is a non-starter, lacks merits and is an abuse of the court process which ought to be dismissed with costs to the Respondents.

### **Analysis And Determination**

8. The court having read through the pleadings and submissions by all parties has analysed the submissions filed by each party and sets out the following issues for determination.
  - a. Whether the application is rightfully before the court.
  - b. Whether the court should grant leave to the Applicant to institute judicial review proceedings.
    - a. Whether the application is rightfully before the court.
9. It is trite law that where there is a law that stipulates a procedure then the same ought to be followed. In the case of *Matindi & 2 Others vs Independent Electoral and Boundaries Commission & 8 others; Commission on Administrative Justice & 4 others (Interested Parties) (Constitutional Petition [E089 of 2022](#)) [2022] KEHC 9763 (KLR) (Constitutional and Human Rights) (21 July 2022) (Judgment)* the court held as follows:

“Where there was a clear procedure for redress of any particular grievance prescribed by [the Constitution](#) or an Act of Parliament, that procedure should be strictly followed.”
10. It is clear that under the Kiambu County Alcoholics Act, 2022, that there is a procedure that has been set out which ought to be followed in the process of renewal of a license. The procedure starts with an application for the renewal of license which the Sub Alcoholics Committee considers and if the applicant is aggrieved, he appeals to the County Alcoholics Drinks Appeals Committee. If the Applicant is still aggrieved with the decision of the Appeals Committee, he/she can then file an Appeal to the High court.
11. Having read through the pleadings filed by either party, the court agrees with the Respondent that the Applicant has not approached this court in the right manner given that judicial review proceedings are distinct from an Appeal. It is worth noting that the two procedures have distinct laws on procedure and they cannot be interchanged. The difference between Judicial review proceedings and an Appeal was issued in the case of *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd [2002] eKLR*, where the Court of Appeal stated;

“Judicial review is concerned with the decision making process, not with the merit itself; the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether the in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters.....The court should not act as a court of appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision”.
12. In view of the findings in the above cited case, the court finds that the Applicant having moved the court in the wrong manner, which cannot be deemed to be a procedural technicality, hence be overlooked, it must decline the application. The Applicant is directed to move the court in the rightful and proper manner as provided for under the legal system in this country.
13. The upshot is that, the Chamber Summons application dated August 15, 2023 lacks merits and the same is hereby struck out for want of procedure.



It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 16<sup>th</sup> DAY OF AUGUST, 2024.**

**D.O. CHEPKWONY**

**JUDGE**

In the presence of;

Martin - Court Assistant

Mr. Imbugwa holding brief for Mr. S.M Gioche Counsel for the Applicant.

Non-appearance for Counsel for Respondent

