



REPUBLIC OF KENYA



KENYA LAW
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**Njoroge v Kariuki (Petition E16 of 2024)
[2024] KEHC 16161 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
PETITION E16 OF 2024
PN GICHOHI, J
DECEMBER 18, 2024**

**IN THE MATTER OF ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF ALLEGED INFRINGEMENT, AND/ OR ONGOING INFRINGEMENT
OF ARTICLES 22,27,47 AND 48 OF THE CONSTITUTION OF KENYA, 2010,
AND
IN THE MATTER OF THE ALCOHOLIC DRINKS CONTROL ACT CAP 121
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT
AND
IN THE MATTER OF THE CHIEF’S ACT CAP 128**

BETWEEN

BERNARD WANJAU NJOROGE PETITIONER

AND

DANIEL MWANIKI KARIUKI RESPONDENT

RULING

1. By a notice of motion dated 5th June, 2024, brought pursuant to Order 40 Rule 1, Order 51 Rule 7 of the *Civil Procedure Rules 2010*, Sections 1A,1B and 3A of The *Civil Procedure Act* Cap 21 of the Laws of Kenya, the Applicant sought for the following orders: -
 1. Spent.
 2. Spent.



3. That pending hearing and determination of the Petition, this Honourable Court be pleased to issue an order of temporary mandatory injunction to compel the Respondent to reopen the Petitioner/Applicant's business premises known as Murata House Pub situated in Kahuho in Bahati Sub-County.
 4. Spent.
 5. That pending hearing and determination of the main Petition, this Honourable Court be pleased to issue an order of temporary injunction to restrain the Respondent, his servants, workmen, licensees, agents or any other persons acting on his own behalf or on behalf of the Respondent from disrupting, closing and interfering whatsoever with the Petitioner/Applicant's business known as Murata House Pub situated in Kahuho in Bahati Sub-County.
 6. That this Honourable Court be pleased to direct the (OSC) Officer Commanding Police Station-Bahati Police Station to provide security towards the enforcement of the orders sought herein.
 7. That the cost of this application be in the cause.
2. The grounds are on the face of the application supported by the Affidavit by Bernard Wanjau Njoroje sworn on the 5th June, 2024.
 3. The Petitioner/Applicant states that he has been operating his business referred to as Murata House Pub situated at Kahuho in Bahati Sub-County since the beginning of the year 2024 and in order to keep the business open, he obtained a Unified Trade Permit number 2024/NJ24C0062501 for the operation of the aforementioned business for the year 2024 which permit was issued on the 8th of March 2024 and is set to expire on the 31st December 2024.
 4. He states that the Respondent, the Assistant area Chief for Chania Sub-Location, has been harassing, intimidating and threatening him with closure of the said premises despite the Petitioner/Applicant being compliant and being in possession of a valid permit.
 5. He further states that to actualize his threats, the Respondent obtained security from certain police officers from the local area and proceeded to close down his business without any justification or reason thereof.
 6. It is his averment that due to this closure of business, the Applicant herein has been locked out of business since April 2024 despite obtaining relevant permits and paying the requisite fees, and a result, he has incurred losses.
 7. He reiterated that the Respondent's illegal and malicious actions are seriously affecting his welfare and livelihood as he has been kept out of his business for almost a year now and he is unable to earn a living.
 8. That unless the order sought are granted in the interim, the Applicant will continue suffering financial losses as he is unable to earn any living and provide for his family.
 9. He further states that he has complied with all the pre-requisite requirement of the [Alcoholic Drinks Control Act](#) Cap 121 of the Laws of Kenya and is also compliant with the requirements and conditions as set out in the permit referred to above.
 10. He adds that the Respondent is abusing his administrative duties, authority and powers accorded to him, thus it is in the best interest of justice and fairness that the orders sought are granted.
 11. Accompanying that application is his Petition dated 5th June 2024 where he seeks the following orders: -



- a. A declaration that the Respondent is in contravention of Articles 22,27,47 and 48 of the Constitution of Kenya 2010.
- b. A declaration that the Petitioner entitled to an order of compensation for violation of his rights.
- c. An order for a permanent injunction restraining the Respondent, his servants, workmen, licensees, agents or any other person acting on his behalf from disrupting, closing and interfering whatsoever with the Respondent’s business known as Murata House Pub situated in Kahuhu in Bahati Sub- County.
- d. General and aggravated damages to the Petitioner.
- e. Costs of and incidental to this Petition.
- f. Any other Order that this Honourable Court deems fit and just to grant in the circumstances.

Analysis

12. This Court has looked at this application. The court process the same is said to have been served on the Respondent on 18th September 2024 by one Edwin Kingori Rukwaro Advocate of Post Office Number 63414 -00619 Nairobi.
13. The said service is said to have been done on the said date through WhatsApp as evidenced by the return of Service sworn by Edwin Kingori Rukwaro advocate on the 18th July, 2024 as per the affidavit of service. The said Advocates are representing the Applicant.
14. There is no response from the Respondent. It is also notable that the Applicant has moved this Court by way of a Constitutional Petition and he has boldly cited Articles of the Constitution on the body of the application where he also cites Alcoholic Drinks Control Act Cap 121 of the Laws of Kenya. As noted earlier, he has sought injunctive orders pending hearing and determination of the Petition.
15. The material in the Petition is the same as in the Notice of Motion except that that he quotes the provisions of Articles 22, 27,47 and 48 of the Constitution of Kenya 2010. He further quotes the Provisions of Section 4 of the Fair Administrative Action and Section 10 of the Chief’s Act Cap 128.
16. In the particulars of infringement, violation and breaches, he states that by constantly coercing, harassing and maliciously disrupting his business, the Respondent violated the Petitioner’s constitutional rights. He further states that the Respondent has discriminated against him by preventing him from legally operating his business. Further, he states that the Respondent failed to justify the closing the said business
17. Lastly, he states that this Court has jurisdiction to determine the petition as conferred by the Constitution.

Determination

18. As to what constitutes a constitutional petition, Mativo J (as he then was) had this to say in the case of Hakizimana Abdoul Abdulkarim v Arrow Motors (EA) Ltd & another [2017] eKLR: -

“A constitutional question is an issue whose resolution requires the interpretation of a constitution rather than that of a statute...”



19. The issue the Applicant has is that he applied for and was issued on the 8th of March 2024 with a Unified Trade Permit number 2024/NJ24C0062501 for the operation of the aforementioned business for the year 2024 but which permit is set to expire on the 31st December 2024.
20. He claims to have complied with all the pre-requisite requirement of the [Alcoholic Drinks Control Act](#) and the conditions set in the permit but the Respondent is abusing his administrative duties and authority by closing the Applicant's business which act the Applicant terms illegal.
21. Though the Applicant has attempted to link the actions complained of to the [Constitution](#), this appears to be a matter that should have been dealt in an ordinary civil suit and not a Constitutional Petition. Be that as it may, and even if this Court is to deal with it as a Petition, the material before court does not warrant granting the orders sought pending hearing and determination of the Petition. In the circumstances:
 1. The orders for injunction at this stage are denied.
 2. Let the Petition be served for hearing on merits.
 3. Costs to abide the outcome of the Petition.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF DECEMBER, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of

Mr. Rukwaro for the Petitioner

Ruto Court- Assistant

RULING HIGH COURT NAKURU CONST& HUMAN RIGHTS PETITION NO. E016 OF 2024 Page
3

