



Muthee T/A Jazzy Liquors v Langata Subcounty Liquor Drink & Licensing Committee (Miscellaneous Application E079 of 2021) [2022] KEHC 11764 (KLR) (Judicial Review) (22 February 2022) (Judgment)

Neutral citation: [2022] KEHC 11764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E079 OF 2021
J NGAAH, J
FEBRUARY 22, 2022**

BETWEEN

JUDY NYARUI MUTHEE T/A JAZZY LIQUORS APPLICANT

AND

LANGATA SUBCOUNTY LIQUOR DRINK & LICENSING COMMITTEE RESPONDENT

JUDGMENT

1. By a motion dated June 2, 2021 filed under order 53 rule 3(1) of the *Civil Procedure Rules*, section 8 and 9 of the *Law Reform Act*, cap 26 the applicant sought for orders framed as follows: chamber summons dated April 26, 2021, the applicant made an application under order 53 rules 1(1), (2) and (4) of the *Civil Procedure Rules* seeking, among other orders, that:

"the court be pleased to grant leave to apply for judicial review"
2. This happens to have been the primary prayer.
3. When the application came up *ex parte* before me on May 28, 2021 I dismissed it and noted as follows:
 1. An order of *certiorari* to remove into the High Court for the purposes of quashing a decision decree (sic) made by the Langata Sub-County Liquor Drink Control and Licensing Committee whereby it was adjudged that the applicant liquor licence be revoked on the March 23, 2021.
 2. An order of prohibition to prohibit and restrain the respondent either by itself, agents, employees or whatsoever (sic) from taking any steps, actions and measures to enforce its decision contained in the letter dated March 23, 2021;



3. (In similar terms as prayer 2)
 4. An order staying the decision of Langata Sub-County Liquor Drink Control and Licensing Committee until the hearing of the application for judicial review or further order.
 5. A declaration that the decision determination (sic) by Langata Subcounty Liquor Drink Control and Licensing Committee on March 23, 2021 was and is invalid and void and of no effect.
 6. Further damages arising from the matters herein and interest thereon.
 7. An order for costs.
 8. Such further and other relief be granted to the applicant as this court deems fit.”
4. According to the affidavit sworn on April 26, 2021, in verification of the facts relied upon the applicant is seeking “to appeal the decision by the Langata Sub County Liquor Drink Control and Licensing Committee dated March 23, 2021.”
 5. The letter in question was written by one Tshombe, who signed it as the respondent’s secretary. The letter is addressed to the applicant and it reads as follows:

Re: Revocation of your licenses

We hereby inform you that the juridical meeting held on March 22, 2021 of the instituted title as per section 8(5-6) and pursuant to section 13 (1-2), 21 (1), 22 and 23 of the Nairobi City Alcoholic Drinks Control and Licensing Act 2014. The committee has revoked your liquor licence.

- (A) The resolutions was (sic) arrived after the defendant failed to submit the requested document to validate operations.
- (B) The committee was not involved in the approval of the said missing licenses to ascertain their validity.

This letter advised (sic) you that any contravening (sic) this directive will meet the full force of law. You are also advised that you have 21 days within which you can appeal our decision.

Yours faithfully

Tshombe

Committee Secretary

6. The background of this letter is apparent not only from the verifying affidavit but also from the affidavit of Enock Tshombe who swore the affidavit in response to the applicant’s application dated June 2, 2021.
7. According to Tshombe, the applicant has been operating a liquor outlet along Bogani East Road in Nairobi without a valid operating licence and certificates as required by the [*Nairobi County Alcoholic Drinks Control Act, 2014*](#) and the [*Nairobi County Finance Act 2019*](#).
8. Owing to the complaints in the neighbourhood in which the applicant undertakes her business, the respondent sought to inquire into the licensing of the applicant’s business operations. To this end, the respondent wrote to the applicant on March 9, 2021 inviting her to attend a meeting with the respondent on March 18, 2021. Indeed, the applicant attended the meeting but did not come with the original licence and certificates as directed. The meeting was therefore rescheduled to March 23,



2021. Once again, the applicant attended the meeting but, just like in the previous meeting, she did not produce the required documents. The licences she purportedly presented were found to be fraudulent in the sense that they were neither issued by the respondent nor existed in the respondent's data bank.
9. Apart from the invalid licence, the applicant did not have the licences for the year 2020/2021. The respondent therefore revoked whatever licences the applicant purported to hold; it is as a result of this revocation that the applicant moved to this honourable court.
10. Section 7 of the *Alcoholic Drinks Control Act, 2010* provides no person shall sell, dispose of, or deal with alcohol unless he is licensed under the act; that section reads as follows:
7. Control of alcoholic drinks
- (1) No person shall—
- (a) manufacture or otherwise produce;
 - (b) sell, dispose of, or deal with;
 - (c) import or cause to be imported; or
 - (d) export or cause to be exported, any alcoholic drink except under and in accordance with a licence issued under this Act.
11. A similar provision is found in section 7 of the *Nairobi City County Alcoholic Drinks Control and Licensing Act, 2014*; it reads as follows:
- (1) No person shall, within the county-
- (a) manufacture or otherwise produce;
 - (b) advertise or market; or
 - (c) sale, disposal, or otherwise deal in, any alcoholic drink except under and in accordance with this Act.
- (2) No person shall-
- (a) Manufacture or otherwise produce;
 - (b) sell, dispose of, or otherwise deal in, any alcoholic drink except under, and in accordance with, a licence issued under this Act.
12. Now, if the applicant did not have a valid licence duly issued in accordance with the law, the question whether her licence was cancelled does not even arise. She simply did not have a licence capable of being cancelled and therefore the applicant's application is, at best, misconceived and an abuse of due process of this honourable court.
13. The proceedings before the respondent demonstrate that the applicant was given a hearing and before her purported licence was "cancelled", she was given opportunity to prove that indeed such licence existed. In the absence of such proof, there is no basis or grounds upon which this court can intervene and exercise its discretion in favour of the applicant and grant any of the orders of judicial review sought.



14. Talking of grounds of judicial review, Lord Diplock discussed them at length in the *Council of Civil Service Unions v Minister for the Civil Service* (1985) A C 374,410, The learned judge enumerated these grounds as follows:

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.”

And as to what these grounds entail, the learned judge continued:

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.

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.

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.”

15. Looking at the applicant’s motion from the foregoing perspective, the applicant has not convinced me that the respondent’s decision is tainted by any of the grounds enunciated in this decision. To be precise, I am not persuaded that in reaching its decision, the respondent did not understand correctly the law that regulates its decision-making power and that it did not give effect to it.
16. It cannot also be urged that the respondent’s decision was 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.
17. The applicant, as earlier noted, was given a fair hearing and given sufficient time to present proof of the liquor licence and, by extension defend herself. The propriety of the proceedings that culminated in the impugned decision cannot be questioned.



18. For these reasons I am not satisfied that the applicant has a competent application before court. The application is dismissed with costs. Orders accordingly.

SIGNED, DATED AND DELIVERED ON 22 FEBRUARY 2022

Ngaah Jairus

JUDGE

