



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**JUDICIAL REVIEW APPLICATION NO. 19 OF 2019**

**IN THE MATTER OF NAKURU DISTRICT ALCOHOLIC DRINKS**

**CONTROL ACT OF 2014 .....APPLICANT**

**VERSUS**

**RONGAI SUB-COUNTY ALCOHOLIC DRINKS &**

**LIQUOR COMMITTEE.....RESPONDENT**

**EX-PARTE**

**LEAH WAMBUI KAMAU T/A**

**LEWAKA BAR & OTHERS.....SUBJECTS**

**RULING**

1. Leave to file these proceedings was granted to the Exparte applicants on the 2/10/2019, pursuant to which the applicants filed the Notice of Motion dated 4/10/2019 under the Provisions of Order 53 Rule 3 of the Civil Procedure Rules, seeking the following **ORDERS**:

- 1) *That the decision of the Respondent communicated through a letter dated 19/7/2019 be brought to this court and the same be quashed by way of an order of certiorari.*
- 2) *That an order of prohibition be issued to restrain the respondent from closing down the businesses operated by the subjects and based on the letters delivered to them dated 19/8/2019.*
- 3) *That an order of mandamus to compel the respondents to grant the subjects licences to operate their respective businesses.*
- 4) *That costs of this application and costs of the summons for leave be borne by the respondent.*

2. The application is supported by grounds stated on the face of the application, the statement of facts and verifying affidavit filed therewith.

3. On the 25/10/2019, leave granted was ordered to operate as stay to restrain the respondent from closing the subjects/applicants businesses pending interparties hearing of the application.

4. The Respondent, Rongai Sub County Alcoholic Drinks & Liquor Committee, by its Advocate George Kinuthia for the Hon. County Attorney filed a Notice of Preliminary Objection (P.O) on the 10/12/2019 based on the following objections.

- 1) *That the instant suit is premature and an abuse of the court process as it offends Section 9 of the Fair Administrative Action Act of 2015, and Section 10, of the Nakuru County Alcoholic Drinks Control Act of 2014.*
- 2) *The Respondent is a Sub County Committee established under Section 9 of the Nakuru County Alcoholic Drinks Control Act of 2014 and the same is not capable of being sued under its name*
- 3) *The suits fails to meet the tenets of Article 159 (c) of the Constitution and Sections 88 and 89 of the County Government Act of 2012.*
- 4) *The suit is incompetent, bad in law and the same should be struck out.*

Mr. Githui Advocate represented Exparte Applicants/subjects.

5. Before the Notice of Motion application could be heard interparteis, the Exparte applicants filed an application on the 14/1/2020 seeking Orders;

*b) That the subjects be granted leave to amend the Notice of Motion and the statement of facts to enjoin the County Government of Nakuru as a 2<sup>nd</sup> respondent;*

6. Upon grounds stated at the face of the application, in the main, that at time of filing the Notice of Motion, the applicants was under the impression that the 1<sup>st</sup> Respondent was clothed with Judicial character, but has since established that respondent was established under the Nakuru County Alcoholic Drinks Act of 2014 and did not legal character.

7. Both counsel for the parties agreed to canvass both applications and the preliminary objection simultaneously, by oral arguments.

The applicants conceded that the respondent was non-suited and lacked legal character to sue, and that the right party was the County Government of Nakuru that they sought to enjoin into the proceedings as 2<sup>nd</sup> Respondent.

8. It is trite that all amendments should be freely allowed at any stage of proceedings provided that the amendments or joinder of parties will not result in prejudice or injustice to the other party – **Central Kenya Ltd Vs. Trust Bank & 4 Others CA No. 222 of 1998, cited in the Court of Appeal case at Mombasa JMK VS. MWM & Another (2015) e KLR. See also Order 1 Rule 10(2) of the Civil Procedure Rules.**

9. In the premises, I proceed to allow Prayer No. 2 of the Notice of Motion dated 14/1/2020. The applicants are ordered to file and serve the amended notice of motion as well as the statement of facts within 15 days of this ruling

10. For the above reason, it is obvious that the main application for Judicial Review cannot be interrogated and a determination rendered at this stage for reasons that:

It is trite that no orders may be made against or in favour of a party who is not a party in the proceedings from which the orders are made. The County Government of Nakuru has been ordered to be enjoined in these proceedings.

It follows therefore that Provisions of Order 8 of the Civil Procedure Rules 2010 ought to be complied with.

11. With that in mind, I direct that this matter be mentioned on a date to be taken upon delivery of the ruling. The orders of Stay shall remain in force pending determination of the Judicial Review proceedings.

It is so ordered

**DELIVERED, DATED AND SIGNED ELECTRONICALLY AT NAIROBI THIS 13TH OF MAY 2020**

**J.N. MULWA**

**HIGH COURT JUDGE**