



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CONSTITUTIONAL PETITION NO. 8 OF 2020**

**MURANG'A BAR OPERATORS ASSOCIATION SELF-HELP GROUP.....PETITIONER**

**VERSUS**

**COUNTY GOVERNMENT OF MURANG'A.....RESPONDENT**

**RULING**

1. The petitioner is a *Self-help Group* registered by the Ministry of Labour, Social Security and Services.
2. It has brought the Petition through its chairman, Simon Njorge, to restrain the respondent from harassing its members or closing down their businesses.
3. The core of the dispute is payment of liquor and licence fees under the **Murang'a County Finance Act 2018**. The petitioner contends that the Act increased the fees by over 100% without public participation or consultation with the petitioner's members. They contend that the rates are exorbitant and will ruin their businesses.
4. The Petition is dated 17<sup>th</sup> March 2020 and is pending for hearing. In the meantime, the petitioner lodged a Notice of Motion of even date praying for a *conservatory order* in the following terms:
  - i. [spent]
  - ii. That pending interparties hearing, an ex parte conservatory order be issued restraining the respondent from harassing the applicants and bar [sic] either by way of closing down their business premises and/or demanding for payment of liquor and trade licence fees as per the Murang'a County Finance Act 2018.
  - iii. That such further or other orders issue to facilitate the joint expeditious and fair determination of this petition. [underlining added]
5. The application and petition is contested. There are Grounds of Opposition dated 14<sup>th</sup> July 2020 and a Reply to the Petition of even date.
6. Both parties filed skeleton submissions on 11<sup>th</sup> June 2020 and 15<sup>th</sup> July 2020 respectively. On the latter date, I heard the motion *interparties*.
7. I desist from commenting on the merits of the petition. But I find that the Notice of Motion as drawn is a classic case of poor draftsmanship: As I have underlined, the petitioner seeks the following: "pending interparties hearing, an ex parte conservatory order be issued restraining the respondent...".
8. There is *no* further prayer for a conservatory order or any relief pending the hearing of the *main petition*. The application having been heard *interparties*, and there having been no grant of any earlier orders *ex parte*, the instant motion is now plainly *redundant*.
9. Prayer number 2 of the Notice of Motion is accordingly *dismissed*. Regarding the remainder of the motion, the petitioner only seeks "such further or other orders issue to facilitate the joint expeditious and fair determination of this petition". In the interests of justice; and, noting that the respondent has replied, I will now allocate an *early* hearing date for the *main petition*.
10. Costs shall abide by the judgment in the petition.

It is so ordered.

**DATED, SIGNED and DELIVERED** at **MURANG'A** this 30<sup>th</sup> day of July 2020.

**KANYI KIMONDO**

**JUDGE**

***Ruling read in open court in the presence of:***

No appearance by counsel for the petitioner.

Mr. Waweru holding brief for Mr. Kimwere for the respondent instructed by Kimwere Josphat & Company Advocates.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.