



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MAKUENI
HC JR. MISC. NO. 4 OF 2018

RAMBO RESOURCE LTD.....APPLICANT

-VERSUS-

MICHAEL KIVONDO ASS. CHIEF EMALI1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

OCPD EMALI POLICE STATION3RD RESPONDENT

OCS EMALI POLICE STATION.....4TH RESPONDENT

RULING

1. By a Notice of Motion dated 09/01/2019 the Ex-parte Applicant sought orders that:-

1) For quashing decision of Respondent to confiscate and detain the 6 gaming machines belonging to him.

2) For compelling Respondents to release 6 gaming machines belonging to the Applicant in Respondent custody.

2. The same is supported by a Verifying Affidavit sworn by him on 09/01/2018 and Statutory Statement dated 09/01/2019.

3. The Respondent did not file any replies despite service of the above motion.

4. The Applicant via his affidavit sworn on 09/01/2019 depones;

1) ***That*** RAMBO RESOURCES LIMITED legally operates gaming machines business in various places in the republic of Kenya with all pre-requisite permits from the national and local authorities.

2) ***That*** there is a constitutional petition ongoing in the High Court of Kenya at Milimani regarding the functions of the national government and the county governments in the fourth schedule of the constitution in connection with division of functions of betting casinos and other forms of gambling.

3) ***That*** the Applicant herein RAMBO RESOURCES LIMITED is one of the Petitioners in the said Constitutional Petition petitioning through its chief executive officer Mr. Peter Njau, Petitioner number six in the said Petition.

4) ***That*** as a result of the above mentioned Petition the high court of Kenya at Milimani issued a conservatory order dated the 7th December 2016 of injunction restraining all law enforces and the relevant authorities and their Agents and Representatives from conducting a crackdown on the Petitioners/Applicants premises and businesses specifically to raid, forcibly enter, confiscate betting and gaming machines, disrupt businesses or in any way suspend or close the operations of the said businesses which order still stands.

5) ***That*** on 17th day of November 2018 police officers and other law enforcement officers from the 1st, 3rd 4th and 5th Respondents offices raided several premises of the Applicants businesses and unlawfully confiscated six (6) single slot gaming machines and consequently the 4th and 5th Respondent has since then detained the machines with complete disregard to the law and the constitution of Kenya 2010.

6) ***That*** deponent strongly believes that the Respondent decision is harsh given the circumstances of the case and further given that this was deponent employer's investment having purchased the machines to operate a gaming business which has employed over three hundred individuals.

5. The Respondent did not oppose the Application despite service thus deemed that what is alleged against them is true. It was upon the Respondent to deny or justify the act complained off.

6. However, I am cognisant of the fact that judicial review remedies being discretionary, the Court would not grant them in certain circumstances even if the same are merited. As is appreciated, in **HALSBURY'S LAWS OF ENGLAND 4TH EDN. VOL. 1(1) PARA 12 PAGE 270:**

“The remedies of quashing orders (formerly known as orders of certiorari), prohibiting orders (formerly known as orders of prohibition), mandatory orders (formerly known as orders of mandamus)...are all discretionary. The Court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying, and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief. Another consideration in deciding whether or not to grant relief is the effect of doing so. Other factors which may be relevant include whether the grant of the remedy is unnecessary or futile, whether practical problems, including administrative chaos and public inconvenience and the effect on third parties who deal with the body in question, would result from the order and whether the form of the order would require close supervision by the court or be incapable of practical fulfilment. The Court has an ultimate discretion whether to set aside decisions and may decline to do so in the public interest, notwithstanding that it holds and declares the decision to have been made unlawfully. Account of demands of good public administration may lead to a refusal of relief. Similarly, where public bodies are involved the court may allow ‘contemporary decisions to take their course, considering the complaint and intervening if at all, later and in retrospect by declaratory orders.’”

7. See **ANTHONY JOHN DICKSON & OTHERS VS. MUNICIPAL COUNCIL OF MOMBASA MOMBASA HCMA NO. 96 OF 2000.**

8. As was stated by Ojwang, AJ (as he then was) in **SULEIMAN VS. AMBOSELI RESORT LIMITED [2004] 2 KLR 589** the Court, in responding to prayers should always opt for the lower rather than the higher risk of injustice.

9. The court is aware and takes judicial notice that the gaming machines confiscated by respondents and / their agents were destroyed country wide a fact which was displayed in all electronic and print media, it could be exercise in futility to issue the orders sought.

10. The applicant has not demonstrated that the same 6 gaming machines are still intact in respondents’ custody. Thus the court finds it save to decline the issuance of the orders sought.

11. However the applicant is at liberty to claim the compensation for the same items via other modes provided by the law and the constitution.

12. Thus the court has no option but to thus hold and make order that;

i. The Application is declined.

ii. No orders as to costs

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKUENI THIS 31ST DAY OF MAY, 2019.

.....

C. KARIUKI

JUDGE