



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**MISCELLANEOUS JUDICIAL REVIEW APPLICATION NO. 7 OF 2019**

**REPUBLIC.....APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF MURANG'A.....1<sup>ST</sup> RESPONDENT**

**CHAIRMAN MURANG'A COUNTY**

**ALCOHOLICS DRINKS BOARD.....2<sup>ND</sup> RESPONDENT**

**CHAIRMAN KAHURO SUB-COUNTY**

**ALCOHOLICS DRINKS REGULATORY COMMITTEE.....3<sup>RD</sup> RESPONDENT**

***EX-PARTE* PETER NDUATI RUTHI.**

**RULING**

1. The *ex parte* applicant is the proprietor of *ten* bars and restaurants in Kahuro Sub-County within Murang'a County.
2. In 2019, he applied for *renewal* of the liquor licences. An inspection of the businesses was conducted between 15<sup>th</sup> and 17<sup>th</sup> April 2019. The applications were rejected.
3. The *ex parte* applicant was however granted three months to “*clear the stocks and close down the enterprise(s)*”. He requested for reasons. They were communicated in letters marked *PNR3*. They ranged from lack of or poor sanitation facilities; poor ventilation; poor lighting; unkempt premises; location in a residential area; failure to secure the premises; and, potential risks of injury to patrons.
4. The *ex parte* applicant avers that he made the necessary changes to the premises but his application for *review* was ignored by the respondents. He contends that the action is unreasonable, discriminatory and aimed at ruining his business. Those matters are detailed at length in the chamber summons; statutory statement; and, verifying affidavit all dated 3<sup>rd</sup> October 2019.
5. On 7<sup>th</sup> October 2019, I granted *leave* to bring proceedings for the writs of certiorari, prohibition and mandamus. The *ex parte* applicant had also prayed that the leave operates as a *stay* of the impugned decision. I ordered that the prayer be canvassed interparties.
6. The respondents were served but did *not* file any reply. They also failed to attend the hearing on 16<sup>th</sup> October 2019. The net effect is that the averments by the *ex parte* applicant remain uncontroverted.
7. The substantive *notice of motion* has been filed and is pending for hearing. It would be prejudicial at this stage to make conclusive findings on the matter. That will be the true province of the trial judge. The only live issue is whether the *ex parte* applicant deserves a stay pending hearing of the substantive motion.
8. Order 53 Rule 1 (4) of the ***Civil Procedure Rules 2010*** gives the court wide and unfettered discretion to grant a stay. That discretion must however be exercised judiciously. The key considerations are whether the applicant has established an arguable case worth of further investigation during the substantive hearing; whether the stay would be efficacious in the circumstances; and whether failure to grant the stay would render the substantive motion nugatory. See ***R v Registrar of Companies ex parte Githongo*** [2001] KLR 299 at 306, ***Oil Com Kenya Limited v PS Ministry of Roads & Public Works & another*** [2008] KLR 104 at 110, ***Jared Benson Kangwana v Attorney General***, Nairobi, High Court J. R. No. 446 of 1995 (unreported), ***R v Clerk County Assembly of Baringo Ex Parte Kamket***, Eldoret, High Court, J.R. No. 8B of 2014 (unreported).

9. Applying those principles to the matter at hand, I find as follows. These are existing businesses. Doubt is completely removed by the prior licences marked *PNR6 (a) to (j)*. The *ex parte* applicant was only applying for renewal of the liquor licences. From the verifying affidavit he carried out some alterations to the premises to comply with the letters from the 1<sup>st</sup> respondent dated 28<sup>th</sup> June 2019. The letters had advised him to seek review of the decision once he made amends. I have seen the applications for review by his counsel in annexures *PNR5 (a) to (j)*. No response has been received from the respondents.

10. Granted those circumstances I find that failure to respond to the application for review of the earlier decision is unreasonable. There is some obvious prejudice to the existing businesses. The less I say about it the better. I am thus satisfied that the *ex parte* applicant has made out an *arguable* case; and, that a stay would be *efficacious* in the circumstances.

11. The upshot is that the leave granted on 7<sup>th</sup> October 2019 to bring proceedings for the writs of certiorari, prohibition and mandamus shall operate as a stay of the impugned decision. The stay granted is for a period of *90 days only* within which period the *ex parte* applicant *must* set down the substantive *notice of motion* for hearing.

12. Costs shall abide with the substantive notice of motion.

It is so ordered.

**DATED, SIGNED and DELIVERED** at MURANG'A this 29<sup>th</sup> day of November 2019.

**KANYI KIMONDO**

**JUDGE**

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

Ms. Kimani for the *ex parte* applicant instructed by R. M. Kimani & Company Advocates.

Mr. Chege holding brief for Mr. Mwangi for the respondents.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.