



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

JUDICIAL REVIEW NO. 1 OF 2018

In the Matter of:

Alcoholic Retail Drinks Licence

And

ALCOHOLIC DRINKS CONTROL ACT

Between

REPUBLIC.....APPLICANT

Versus

CHAIRMAN, LIQUOR LICENCING BOARD,

MERU COUNTY.....RESPONDENT

JOYCE KAINDA, GASPLINA KINANU

& ESTHER MARINGA KINYUA.....EX PARTE APPLICANTS

RULING

The holocaust of illicit liquor

[1] The Exparte Applicants have been granted leave to apply for orders of Mandamus to compel the Respondent (chairman, Liquor Licensing Board Meru County) to issue them with license to prepare and sell beer powder known as *Ndume*, maize-based beverage beer.

[2] On 8th March 2018, when parties were to argued whether leave granted should operate as stay, Mr. Kiongo for the State raised two pertinent issues. First, it was his view that, the Respondent in this suit is the Chairman, Liquor Licensing Board, Meru County. As such, the County government ought to be served with these proceedings so that it may request for representation by the office of the Attorney-General. He cited Section 43 of the County Government Act which states that County Governments may request the Attorney General to represent them in court. The said section provides as follows:

Representation of county government by Attorney-General in court

A county government may, pursuant to Article 156(4) of the Constitution request the Attorney-

General to represent the county government in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings.

[3] He further contended that Article 156(5) of the Constitution allows the AG to appear as Amicus Curiae in matters of public interest. Mr. Mutura on the other hand contended that National Government enforces laws on alcoholic drinks and that the Ag was the proper party to this suit.

[4] I ponder over the matters raised. Of pointed relevance to the argument I have heard is Article 186 (1) of the Constitution of Kenya titled; **“respective functions and powers of national and county governments”** which provides as follows;

“Except as otherwise provided by this Constitution, the functions and powers of the national government and the county governments, respectively are set out in the Fourth Schedule.”

[5] Part 2 of the Fourth Schedule to the Constitution of Kenya and in particular paragraph 4 (c) thereof provides that;

The functions and powers of the county are;

(c) Liquor licensing.

[6] **Part II** and in particular **Section 5 of the County Governments Act** mirrors the foregoing position of the Constitution and sets out the functions of the County Governments. Section 5 (1) (c) provides;

5. Functions of county governments

(1) A county government shall be responsible for any function assigned to it under the Constitution or by an Act of Parliament.

(2) Without prejudice to the generality of subsection (1), a county government shall be responsible for—

(a);

(b);

(c) functions provided for in Article 186 and assigned in the Fourth Schedule of the Constitution;

(d);

(e)..... ; and

(f).....

[7] A reading of these provisions, reveals that that one of the functions of the County Governments is liquor licensing. Accordingly, in my considered view, the Meru County Government is a proper and necessary party to this suit. They should be served with these proceedings. And, under section 43 of the County Governments Act, the County Government of Meru may or may not request for representation by the Attorney General in proceedings where they are parties. The AG may also under Article 156(5) of the Constitution apply to join proceedings where the national government is not a party as **Amicus Curiae**. That notwithstanding, by virtue of Article 156(6):-

The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest. [Underlining mine]

These proceedings are for judicial review; now, a constitutional relief under Article 23(3) (f) of the Constitution- thus, involves public remedy. The chairman of the Board is also an employee of the national government. As defender of public interest, the AG should be involved in the proceedings.

The holocaust of illicit liquor

[8] I note also, and Mr. Kiongo correctly stated that, this matter concern a matter of great public interest for we have seen the holocaust illicit liquor has visited upon our people. On this, I will take little latitude and state only in passing, that; a nation is made up of its people and its existence depends on the health and reproduction of its people. Thus, nations look up to its young people to usher in generations of mankind; a hope on which a nation's existence is anchored. But bad times come. You see illicit liquor visiting a holocaust upon the people of Kenya; wherein thousands of lives, the majority being the young people have been lost to the dragon. Professors, Engineers, lawyers, doctors and other eminent professionals have not been spared; their mind and prowess as well as their precious lives are lost in senseless deaths arising from consumption of illicit liquor. Needles to state that, intake of illicit liquor has decimated the potency to reproduce. In some areas, pre-school and nursery schools were closed down; there were no new-born to attend the schools. Great minds or would-be Professors, Engineers, lawyers, doctors and other eminent professional are lost. And the death toll had become rapid and headlong. It was almost sure that in a short time, class rooms, lecture rooms, senior common rooms, judges' chambers, advocates offices, and other eminent chairs of professional honour was going to become thinner and thinner, and eventually completely empty. An ominous cloud over the future of the nation of Kenya was cast by illicit liquor. And, the need for all persons including organs of the state, to play their role to curb the menace became immediate, vigorous, systematic and deliberate action; the executive took the cue and acted. Looking at these things, I agree with Mr. Kiongo that matters of licensing liquor is not a small matter.

[9] In the upshot, I direct that the County of Meru be served with these proceedings immediately. The AG, however remains on record for the Respondent who is also an employee of the National Government. Directions shall be issued accordingly. It is so ordered.

Dated, signed and delivered in open court at Meru this 13th day of March 2018

F. GIKONYO

JUDGE

In the presence of:

Mungai for Mutura for Exparte Applicant

Kiongo for Respondent

F. GIKONYO

JUDGE