



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION 4 OF 2017

EUNICE NJAMBI ODERA T/A

VISION BUDGET PUB & BUDGET PUP1ST PETITIONER

ESTHER MUTHONI MANOAH T/A HIGHWAY BAR...2ND PETITIONER

LEAH WAMBUI KAMAU T/A LEWAKA BAR.....3RD PETITIONER

SIMON MUNENE NDUNGU T/A LAKERS PUB.....4TH PETITIONER

VERSUS

COUNTY GOVERNMENT OF NAKURU.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

THE INSPECTOR GENERAL.....3RD RESPONDENT

NATIONAL POLICE SERVICE.....4TH RESPONDENT

THE CABINET SECRETARY MINISTRY

OF INTERIOR & COORDINATION OF

NATIONAL GOVERNMENT.....5TH RESPONDENT

RULING

1.The application before me dated 31/1/2017 was filed under certificate of urgency on 3/2/2017. The applicant seeks orders inter alia that:-

i. THAT pending the hearing and determination of this application this honourable court do issue an order of temporary injunction restraining the representatives or nominees, OCPD, OCS and/or police officers of Menengai Police Station from stepping into, closing, threatening and/or in any other way interfering with the Applicant's businesses known as Vision Budget Pub, Budget Pub, Highway Bar, Lewaka Bar and Lakers Pub located on Plot No.1/09 Mangu, 11/11 Mangu, 107/11 Mangu West and Plot No.394 Menengai West respectively and carrying on the businesses of Bars and Restaurants.

ii. THAT pending the hearing and determination of this application this honourable court do issue an order of mandatory injunction compelling the 1st respondents to issue the petitioners with annual licences.

iii. THAT pending the hearing and determination of this application this honourable court do issue an order of prohibition against the respondents either by themselves, their servants, agents, assignees, representatives or nominees, OCPD, OCS and/or police officers of Menengai Police Station from stepping into, closing, threatening and/or in any other way interfering with the Petitioners' businesses known as Vision Budget Pub, Budget Pub, Highway Bar, Lewaka Bar and Lakers Pub located on plot No.1/09 Mangu, 11/111 Mangu, 107/11 Mangu West and Plot No.394 Menengai West respectively and carrying on the businesses of Bars and Restaurants.

2. The application was certified urgent by Odero J on 6/2/2017. When the matter came up for mention on 28/2/2017, Mr. Ikuu for 1st respondent sought time to file a Replying Affidavit which the court granted and adjourned the matter to 16/3/2017. On that date however the 1st respondent did not appear, while Mr. Kirui appeared for the 2nd, 3rd and 4th respondents. He sought time to file a response. Mr. Awuonda for the petitioner did not oppose the application for extension of time. He only sought to address the court on the prayer for temporary orders pending *inter partes* hearing due to the urgency of the matter.

3. In his brief submissions, Mr. Awuoda stated that the petitioners were bar owners who have been in the business for approximately 20 years. They had peacefully conducted their respective business until last year when the 1st respondent refused to issue them licences and started harassing them by threatening to close the premises and press criminal charges against them. He urged the court to grant the injunctive orders sought. He admitted however that the licences had expired hence the mandatory orders sought to compel the respondents to issue the same.

4. In brief response, Mr. Kirui for the 2nd, 3rd and 4th respondents submitted that the application was an abuse of process of court. He submitted that the regulation of alcohol was a matter of immense public interest and that the respondents had the mandate to regulate. He said that the applicant's licences had expired. He referred the court to gazette notice No.5069 dated 10/7/2015 in which the Cabinet Secretary for Interior and Co-ordination of National Government appointed an inter-agency task force to look into the control of illicit brews.

5. I have considered the aspects of the application and submissions of counsel on the prayer for interim injunctive orders. I must state at the outset that the gazette notice No.5069 supplied to the court by counsel for the 2nd, 3rd and 4th respondents was not helpful at this stage as it only sets out the mandate of the Task Force whose work, in any case, would only culminate in recommendations to the Cabinet Secretary. That said, the determination whether or not to grant interim injunctive orders at this stage other than meeting the principles set out in **Giella -Vs- Cassman Brown & Co. Ltd (1973) E.A 358** must turn on the legality or otherwise of the closure notices and the legal action threatened against the applicants by the respondents. Without the benefit of a full hearing, it is not possible for me to arrive at such a determination. For that reason, I am disinclined to grant any interim orders. I direct that the application be set down for inter partes hearing on priority basis.

Ruling delivered, dated and signed this 21st day of March 2017

R. LAGAT KORIR

JUDGE

In the presence of:

C/A Emojong

Mr. Orege holding brief for Mongeri for the petitioner

Mr. Orege holding brief for Mr. Ikua for 1st respondent

Mr. Kirui for 2nd, 3rd and 4th respondent