



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

PETITION NO. 10 OF 2016

IN THE MATTER OF BETTING AND GAMING ACT CAP 131 LAWS OF KENYA

BETWEEN

LAWRENCE MAINA AND 11 OTHERS.....PETITIONERS

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

NATIONAL POLICE SERVICE.....3RD RESPONDENT

SECURITY AND CO-ORDINATION

OF NATIONAL GOVERNMENT.....4TH RESPONDENT

BETTING CONTROL & LICENSING BOARD.....5TH RESPONDENT

COUNTY GOVERNMENT OF NAKURU.....6TH RESPONDENT

COUNTY GOVERNMENT OF BOMET.....7TH RESPONDENT

COUNTY GOVERNMENT OF NAROK.....8TH RESPONDENT

RULING

The notice of motion application dated 17th day of November 2016 seeks the following orders.

(1) Spent

(2) That conservatory orders be granted restraining the Respondents or any other public officer or public body from suspending, revoking or in any way interfering with the petitioners lawful running of their business namely Gaming machines or otherwise organizing gangs or inciting members of the public or however, procuring unlawful invasions into the petitioners premises within the Republic of Kenya, or looting and destruction of their properties, namely gaming machines pending the hearing of this petition interpartes.

(3) Conservatory orders to be granted in line with prayer 2 pending the hearing and determination of the petition.

The grounds are that the Respondents have closed down the petitioners Business and confiscated the applicants gaming machines which has caused the petitioner to incur loss and damages.

(b) That the acts of the Respondents is unconstitutional and unless the court intervenes the Supreme Law of the country shall be rendered Nugatory.

The sixth Respondent, the county government of Bomet did file a notice of preliminary objection dated 16th January 2017 in which it is

contended that both the petition and the notice of motion application do not point with certainty which rights the Respondents have infringed, denied and or threatened to violate.

The petitioners are seeking conservatory injunctions against the Respondents.

Issues for determination

(1) Whether the injunctions sought are available to the petitioners in the circumstances of this petition and in the manner in which they are sought.

The principles of granting injunctions were long considered in the case of **Giella Vs Casman Brown & Co Ltd 1973 EA 358**.

These were (1) That the applicant must establish a prima facie case with a probability of success.

(2) Demonstrate irreparable loss that cannot be compensated by way of damages.

(3) Wherein doubt to decide the matter on a balance of convenience.

Prima facie case

In the supporting affidavit of Lawrence Maina at paragraph 3 he deposes:-

“That we were issued with licences to trade by the concerned counties, namely County government of Nakuru, County Government of Bomet and County Government of Narok. Annexed and marked as exhibit LMN 3 are copies of the relevant licences respectively”.

Annexure LMN 3 comprises of licences for pool table/gaming machines for the year 2016 issued by the county Governments of Nakuru, Bomet and Narok.

Annexure LMN 4 is a copy of a News paper cutting which purports to show the Respondents Acts. This newspaper cutting is entitled **Nyanza/Western News** and bears the heading “Eight suspects arrested in a swoop on illegal gambling dens.

The operation was shown to have been conducted by police and local administration. This operation was shown to have been carried out in Kisumu but not in Narok, Bomet or Nakuru. Further it was not carried by officers or employees of the three county governments but by the central government.

The business of gaming is controlled by the Betting lotteries and gaming Act Cap 131 laws of Kenya.

The county governments issues trading licences within a given county.

It was incumbent upon the petitioners to seek permits from Betting control and licensing Board.

This is the same authority that had ordered for assistance in eradication of gambling machines that had mushroomed in the country and hence the confiscation of the said machines.

The confiscation orders did not emanate from the county governments but from the central Government.

The petitioners had to show that they had engaged the relevant licencing board and their rights had been infringed, violated and or threatened with violations.

They could have done so by annexing in their affidavits documentary evidence or otherwise of their attempts to pursue the licences from the relevant licensing board.

This court finds that no prima facie case with probability of success has been established.

Irreparable loss that cannot be compensated by damages

It's the petitioners contention that they have incurred loss and damages as a consequence of the closure of their business and confiscation of their gaming machines.

I am not satisfied that such loss and damage cannot be compensated by way of damages.

In conclusion, I find that the application has no merit and its dismissed with no order as to costs.

Ruling delivered dated and signed this 13th March 2017 in open court and in the presence of learned counsel for the petitioner Ngamate. Learned counsel for the Respondents. Court assistant Mr Rotich.

M. MUYA

JUDGE

13/4/2017

Certified copies of the ruling to be furnished to counsels.

M. MUYA

JUDGE

13/4/2017