



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
JUDICIAL REVIEW APPLICATION NO 1 OF 2016

1. ROYAL DISTRIBUTORS
2. G. M. DISTRIBUTORS
3. STEPS DISTRIBUTOS
4. ALPHA DISTRIBUTORSAPPLICANTS

VERSUS

1. ATTORNEY-GENERAL
2. MURANG'A COUNTY COMMISSIONER OF POLICE (SUED
THROUGH INPECTOR-GENERAL, NATIONAL POLICE SERVICE)
3. MURANG'A COUNTY GOVERNMENT.....RESPONDENTS

R U L I N G

1. The *Ex Parte* Applications herein, **Royal Distributors, G M Distributors, Steps Distributors and Alpha Distributors** applied by **amended chamber summons filed on 17/03/2016** (the original application is dated 15/01/2016) for three main orders as follows –

- (i) Leave to apply for an order of *certiorari* to bring to the High Court and quash “the decision of the 3rd Respondent revoking the letter authorizing the Applicants to distribute alcoholic beverages”.
- (ii) Leave to apply for an order of *prohibition* to prohibit the Respondents (and their agents, departments and affiliates) from confiscating or destroying the Applicants’ goods and products, or harassing the Applicants and charging them in court pursuant to the said revocation now sought to be challenged.
- (iii) An order that such leave, if granted, do operate as a “stay of the decisions of the 3rd Respondent in so far as they relate to the Applicants’ lawful business operations”.

2. There is a statutory statement and verifying affidavit filed together with the application.

3. The 1st and 2nd Respondents have not filed any response to the application, and there was no appearance for them at the hearing thereof. The 3rd Respondent does not oppose the leave sought; but it

opposes the prayer that such leave do operate as a stay. Towards that end it filed grounds of opposition dated 17/03/2016, but no replying affidavit. The grounds of opposition put forward are –

(i) That allowing leave to operate as a stay would be “tantamount to allowing the main prayer in the applicant’s application”, which will result into “undoing what the 3rd Respondent has already done by legislative function”.

(ii) That what the Applicants are urging are private rights which are in conflict with public rights, and which can be compensated by way of damages.

(iii) That, in effect, the main motion, once filed, will not be rendered nugatory.

(iv) That granting the stay sought will expose the 3rd Respondent to many other suits, and the 3rd Respondent shall thereby be rendered “unable to curb the rise in excessive alcoholism as a vice in the county”.

4. As leave is not opposed, I will grant prayers 2 and 3 of the application. The substantive motion shall be filed as provided for in the Rules.

5. As for the prayer for leave to act as a stay, I have considered the submissions of the learned counsels appearing. I have also read the statement of facts and verifying affidavit, and have perused the documents annexed hereto.

6. By a **letter dated 20th November 2015** the 3rd Respondent noted that the Applicants (and other distributors of wines and spirits in Murang’a County who had been operating “under the table”) had submitted applications for licensing which were being considered “but the process had been delayed due to unavoidable circumstances”. They would all “operate as wholesale distributors and adhere to the law as they await the licensing process to be concluded”. This letter was from the Directorate of Alcoholic Drinks Control of the 3rd Respondent addressed to all its sub-county administrators.

7. Ten days later **another letter dated 30/11/2015** was written, from the same source and addressed to the same sub-county administrators. The letter again noted that the Applicants (and others) had submitted applications for licensing. But it directed that “they should NOT operate until the process is over”. The same injunction is repeated at the end of the letter in the following words –

“Please note they should NOT operate until further consultation is done.”

8. It is this letter (or the decision it contains) that is sought to be challenged in this judicial review. Not a single reason is given in this letter for the reversal of the authorization given by the earlier letter to the Applicants (and others) to “operate as wholesale distributors and adhere to the law as they await the licensing process to be concluded”.

9. In these circumstances I have no hesitation at all in directing that the leave granted herein shall operate as a stay of the decision contained in the aforesaid letter dated 30/11/2015 injuncting the Applicants from operating as wholesale distributors, pending conclusion of the licensing process. It is so ordered.

10. Costs of the application shall be in the substantive notice of motion for judicial review.

DATED, SIGNED AT MURANG’A THIS 21ST DAY OF APRIL 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG’A THIS 22ND DAY OF APRIL 2016