

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL CASE NO. 3 OF 2016

JOHN IRERI

DORIS WAIRIMU

PETER NJAGI MUNYA.....PLAINTIFFS

VERSUS

THE EMBU COUNTY COMMISSIONER.....DEFENDANT

RULING

1. This is an application for a temporary injunction to restrain the defendant from enforcing the provisions of the Alcoholic Drinks Act No. 4 of 2014 until the directorate of alcoholic drinks is established under the said Act. There is a supporting affidavit sworn to by John Ileri. According to the affidavit evidence in paragraph 14 the parties filed a consent with the Embu County Government and agreed that they debate the bill to establish a directorate, which consent is part of the application in Embu Judicial Review Miscellaneous Application No. 216 of 2014.

2. In the above Judicial Review Application, the *ex-parte* applicant namely Embu County Liquor Dealers Association applied for and obtained leave to apply for orders of mandamus to compel the respondent (the County Government of Embu) to establish a directorate of alcoholic drinks control, an order of certiorari to quash notices issued by the respondent dated 9th October 2014 and 10th November 2014, which directed liquor dealers/bar owners to renew their licences and pay fees for licences and all committees and notices to be suspended and disbanded. The grant of the *ex-parte* leave was to operate as a stay of the notices dated 9th October 2014 and 10th November 2014. The *ex-parte* applicant extracted an order in those terms and put the defendant on notice of penal consequences in the event that the defendant defied those orders. The order was granted by *Muchemi J*, on 18th November 2014.

3. The same plaintiff namely Embu County Liquor Dealers Association has applied for a temporary injunction to restrain the Embu County Commissioner from harassing, arresting and charging in court the workers of the plaintiffs namely the Embu County Liquor Dealers Association. In the supporting affidavit of John Ileri on behalf of the plaintiff in paragraph 22, they are seeking an order of this court to restrain the Embu County Commissioner/Provincial Administration from enforcing the provisions of the Alcoholic Drinks Control Act No 4 of 14 until the directorate of alcoholic drinks is established under the said act.

4. In the plaintiffs' notice of motion, it is stated that the Embu County Commissioner is acting without the establishment of the office of the directorate which they allege is illegal.

5. It is clear that the plaintiffs applied and obtained *ex-parte* leave to file for orders of mandamus and certiorari and the grant of those orders was to operate as a stay of the notices issued by the County Government of Embu. Those orders are still in force and have not been challenged to date. The temporary injunction sought against the County Commissioner is to restrain the County Commissioner from harassing and interfering with the business operations of the plaintiffs because the Embu County Government has not established a directorate of the alcoholic drinks control under section 3 of the Embu

County Alcoholic Drinks Control Act No. 2 of 2014. The fact that the current defendant is the Embu County Commissioner does not in any way affect the validity of the order granted by the court on 18th November 2014.

6. In the circumstances, this matter should be placed before *Muchemi J* for further directions, because the order issued by her is still in force.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 19th day of April 2016

In the presence of Ms Thungu for the plaintiffs and in the absence of the defendant

Court clerk R. Njue

J. M. BWONWONGA

JUDGE

19/04/2016.