



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS APPLICATION NO. 27 OF 2015

IN THE MATTER OF: THE COUNTY GOVERNMENT ACT NO. 17 OF 2012 OF THE LAWS OF KENYA

IN THE MATTER OF: THE LAW REFORM ACT, CAP 26 OF THE LAWS OF KENYA

IN THE MATTER OF: CRIMINAL PROCEDURE CODE CAP 75 OF THE LAWS OF KENYA

IN THE MATTER OF: THE MOMBASA COUNTY LIQUOR LICENSING ACT 2014

IN THE MATTER OF: THE MOMBASA COUNTY DIRECTORATE OF LIQUOR CONTROL

IN THE MATTER OF: MOMBASA COUNTY GAZETTE SUPPLEMENT NO. 7 LEGISLATIVE SUPPLEMENT NO. 1 LEGAL NOTICE NO. 1

IN THE MATTER OF: THE KENYA GAZETTE NOTICE NO. 2495 OF 17TH APRIL 2015 VOL. CXVII NO. 39

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 AN APPLICATION FOR LEAVE OF COURT TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS AGAINST THE EXECUTIVE INCHARGE OF TOURISM DEVELOPMENT AND CULTURE MOMBASA COUNTY, MOMBASA COUNTY GOVERNMENT AND THE MOMBASA COUNTY DIRECTORATE LIQUOR CONTROL

BETWEEN

PATRICK MUKIRI KABUNDU.....APPLICANT

AND

1. THE EXECUTIVE IN CHARGE OF TOURISM DEVELOPMENT AND CULTURE

MOMBASA COUNTY.....RESPONDENT

2. THE COUNTY GOVERNMENT OF MOMBASA.....RESPONDENT

3. THE MOMBASA COUNTY DIRECTORATE LIQUOR CONTROL.....RESPONDENT

1. THE DIRECTOR OF PUBLIC PROSECUTION.....INTERESTED PARTY
2. WEKESA SIMIYU.....INTERESTED PARTY
3. SAM IKWAYE.....INTERESTED PARTY
4. EDWARD JUMA.....INTERESTED PARTY
5. VICTOR SHITAKHA.....INTERESTED PARTY
6. STELLAH EKORR SULULU (MS).....INTERESTED PARTY
7. RISHI ARUN PARIKH.....INTERESTED PARTY
8. LILIAN MSHAI KALELA.....INTERESTED PARTY
9. CHIEF OFFICER EDUCATION AND CHILDREN.....INTERESTED PARTY
10. CHIEF OFFICER WATER AND ENVIRONMENT.....INTERESTED PARTY
11. CHIEF OFFICER FINANCE AND ECONOMIC PLANNING.....INTERESTED PARTY
12. CHIEF OFFICER HEALTH.....INTERESTED PARTY
13. CHIEF OFFICER LAND AND PLANNING.....INTERESTED PARTY
14. CHIEF OFFICER TRANSPORT AND INFRASTRUCTURE.....INTERESTED PARTY
15. DAVIES MWASI KIONDO.....INTERESTED PARTY
16. CHARLES PETER MUTUA.....INTERESTED PARTY
17. WILSON KIAMA NGIBUINI.....INTERESTED PARTY
18. KENNEDY MUMBO.....INTERESTED PARTY
19. FRANCIS KIBUTHU.....INTERESTED PARTY
20. RUTH WAMBUI.....INTERESTED PARTY

EX PARTE: PATRICK MUKIRI KABUNDU

CONSOLIDATED WITH:

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITON NO. 18 OF 2015

IN THE MATTER OF: ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA AND SUPERVISORY JURISDICTION AND PROTECTIN OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL (HIGH COURT PRACTISE AND PROCEDURE RULES)

2013

AND

IN THE MATTER OF: CONTRAVENTION OF CONSTITUTIONAL PROVISIONS AND FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 10, 20, 27, 29, 40, 47, 232 AND 259 OF THE CONSTITUTION REGARDING UPHOLDING OF THE NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE, PROMOTION OF VALUES THAT UNDERLIE AN OPEN AND DEMOCRATIC SOCIETY, BASED ON HUMAN DIGNITY, EQUALITY, EQUITY AND FREEDOM, RIGHT TO EQUALITY AND FREEDOM FROM DISCRIMINATION, RIGHT TO FREEDOM AND SECURITY, PROTECTION OF PROPERTY, PROTECTION OF ECONOMIC INTERESTS, RIGHT TO FAIR ADMINISTRATIVE ACTION, PROMOTION OF VALUES AND PRINCIPLES OF PUBLIC SERVICE AND CONSTRUING OF CONSTITUTION IN MANNER THAT PROMOTES ITS PRINCIPLES, VALUES, ADVANCES HUMAN RIGHTS AND CONTRIBUTE TO GOOD GOVERNANCE

AND

IN THE MATTER OF: MOMBASA LIQUOR LICENSING ACT, 2014

IN THE MATTER OF: WEDNESBURY UNREASONABLENESS AND IRRATIONALITY BY THE MOMBASA COUNTY GOVERNMENT

IN THE MATTER OF: CRIMINAL CASES NOS. 712 OF 2015 REPUBLIC VERSUS PATRICK MUKIRI KABUNDU, CRIMINAL CASE NO. 1133 OF 2015 REPUBLIC, COLLINS MARITINE AND KENNETH OTIENO, CRIMINAL CASE NO. 1140 OF 2015 REPUBLIC VERSUS JOSEPHINE KAREMI, NAHASHON MUNGERIA, NYAMBANE WINES & SPIRITS TUDOR AND CRIMINAL CASE NO. 1057 OF 2015 REPUBLIC VERSUS RUTH MUSUDI – KILINDINI BAR MAKANDE

BETWEEN

1. DAVIES MWASI KIONDO & 5 OTHERS.....PETITIONERS

(SUING ON THEIR BEHALF AND ON BEHALF OF ALL MEMBERS OF A WELFARE GROUP KNOWN AS MOMBASA COUNTY BARS, HOTELS, RESTAURANTS AND GUEST HOUSES WELFARE GROUP)

VERSUS

MOMBASA COUNTY GOVERNMENT.....RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

1. Firstly I want to record my apology to the Applicant and the Respondents for the delay in delivering this Ruling. It has been a question of marathon work, and prioritizing some aspects of the outputs.

2. In his Notice of Motion dated 10th October, 2015, the indefatigable Applicant, Patrick Mukiri Kabundu sought orders to commit Hassan Joho, the Governor of the County of Mombasa, Mr. Joab Tumbo, County Secretary for Tourism, Wekesa Simiyu, the Director of the County of Mombasa Directorate of Liquor Licensing and Control, and Edwin Okiyo, the Secretary to the Directorate of Liquor Licensing and Control for a period of six (6) months for the wilful disobedience of this court's orders made on 30th July, 2015.

3. The Notice of Motion aforesaid (the Application) was based upon the grounds on the face thereof and the Applicants Supporting Affidavit sworn on 10th October, 2015.

4. It is correct that, this court made an order temporarily restraining the Respondents from implementing the Liquor Licensing Act 2014, but rather the prosecution of the Applicant and the Interested Parties, pending the Judgment in Petition No. 18 of 20165, and the Judicial Review Application No. 27 of 2015. Both the Petition and Judicial Review Application were determined in a Judgment delivered on 13th October, 2015.

5. It is the Applicant's case that in the pendency of the Judgment, the Respondents kept insisting on the payment for liquor licences, allegedly contrary to the court's restraining orders. There were no such orders. The restraining orders merely applied to the Applicant's and Interested Parties prosecution. If the restraining were to apply to the application of the Mombasa County Liquor Licensing Act 2014, this court would have issued such orders right on the first application of the Applicant and the Petitioners.

6. This being the case, I do not propose to address the legal aspects of contempt of court or authorities by either party's counsel except to say that Judgment in the Petition and Judicial Review Application having been duly delivered, any application antecedent thereto and not determined before the delivery of the Judgment is subsumed therein, and is to that extent incompetent as the issues giving rise to alleged contempt have been addressed and found to have no merit.

7. Similarly the application for alleged contempt has no merit either, and is dismissed with a direction that costs rest with the respective parties.

8. It is so ordered.

Dated, Signed and Delivered in Mombasa this 16th day of August, 2016.

M. J. ANYARA EMUKULE, MBS

JUDGE

In the presence of:

No Appearance for Applicant

Mr. Obinju for Respondents

Mr. Silas Kaunda Court Assistant