



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**JUDICIAL REVIEW NO 5 OF 2016**

**SAMMY NG'ANG'A MUKUNA (T/A**

**CALABASH RESTAURANT).....APPLICANT**

**VERSUS**

**MURANG'A COUNTY GOVERNMENT.....RESPONDENT**

**R U L I N G**

1. On 14/07/2016 this court granted the Applicant leave to apply for judicial review and seek an order of *certiorari* to remove to this court for purposes of quashing it the decision dated 10/03/2016 by **Kigumo Sub County Alcoholic Drinks Regulations Committee** of the Respondent by which the Applicant was refused a license to sell alcoholic drinks for the year 2016. That was prayer (b) in the *ex parte* chamber summons dated 11/07/2016. The necessary substantive notice of motion dated 08/08/20126 was subsequently filed on that date. The same is pending disposal.

2. This ruling concerns prayer (c) of the aforesaid *ex parte* chamber summons by which the Applicant sought an order that the leave granted on 14/07/2016 do operate as a stay of the impugned decision pending disposal of the substantive motion. That prayer is opposed by the Respondent

3. The Applicant's complaint is that he was never accorded an opportunity to be heard before his application for licence to sell alcoholic drinks for the year 2016 was rejected. He has stated further that after rejection of his application he appealed in accordance with the rules of the Respondent, but that his appeal was dismissed without him being accorded an opportunity to present it.

4. Should these complaints turn out to be true after hearing of the substantive notice of motion, the Applicant's constitutional right to be heard before being condemned will have been gravely violated. It is not the function of this court in judicial review to substitute its own decision in place of the decision challenged in these proceedings; the jurisdiction of the court in judicial review is to ensure that the processes and procedures leading to the impugned decision were fair, just and in accordance with the law and the Constitution. However, the court has jurisdiction to order stay of the impugned decision pending disposal of the substantive motion to ensure justice to the parties concerned.

5. The Respondent filed grounds of opposition dated 20/078/2016 in respect of the prayer for leave to operate as a stay of the impugned decision. None of those grounds amount to an assertion that the Applicant was accorded his natural right to be heard before refusal of his application, or before dismissal of his appeal. It is also to be noted that there is no replying affidavit filed by the Respondent in response to the Applicant's complaint of not being accorded an opportunity to be heard.

6. In these circumstances, and having heard submissions by the learned counsels for the parties, I have no hesitation at all in granting prayer (c) of the *ex parte* chamber summons dated 11/07/2016. The leave granted on 14/07/2016 shall operate as a stay of the impugned decision pending disposal of the substantive notice of motion. It is so ordered. Costs shall be in the substantive notice of motion.

**DATED AND SIGNED AT MURANG'A THIS 13<sup>TH</sup> DAY OF OCTOBER 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 14<sup>TH</sup> DAY OF OCTOBER 2016**