



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**MISC CIVIL APPLICATION NO 2 OF 2015 (JR)**

**FREDRICK GITHU KAMAU.....EX PARTE APPLICANT**

**VERSUS**

**KANDARA SUB-COUNTY ALCOHOLIC DRINKS REGULATION COMMITTEE**

**MURANG'A COUNTY GOVERNMENT.....RESPONDENTS**

**AND**

**B GICHEHA.....INTERESTED PARTY**

**R U L I N G**

**1.** On 06/10/2015 the *Ex Parte* Applicant was granted leave herein, pursuant to chamber summons dated 05/10/2015, to apply for judicial review and seek the following orders -

**(i) *Certiorari* to remove to the High Court and quash the Respondents' and Interested Party's "...notice dated 30/092015 directing the cessation/closure of the Applicant's alcoholic business (bar) situate in Kagunduini Township of Murang'a County, more particularly as *Kagunduini Stage Bar*".**

**(ii) *Prohibition* "...to bar the Respondents from withdrawing the trading license (liquor license) for the year 2015 issued to the Applicant by the Respondents in respect of the premises known as Kagunduini Stage Bar situated in Kagunduini Township of Kandara Sub-County, Murang'a County.**

It is not clear from the record if the necessary substantive motion has been filed.

**2.** The *Ex-parte* Applicant also sought in prayer 4 of the application an order that such leave, if granted, do operate as a stay of the challenged notice. The court directed that the said prayer be canvassed *inter partes*. Arguments in respect thereof were made on 17/11/2015. This ruling concerns that issue only.

**3.** I have considered the submissions of the learned counsels appearing, including the cases cited. I have also read through the statutory statement and verifying affidavit filed together with the application for leave, and also the Respondent's **replying affidavit** filed on 23/10/2015. It is sworn by the Interested Party, who is also the chair of the 1<sup>st</sup> Respondent.

**4.** The *Ex Parte* Applicant has complained that he has been given notice to close his legitimate business without being accorded an opportunity to be heard, and without any reasons being given for that

drastic decision. His business is thus faced with imminent closure without adherence to basic tenets of natural justice, and in violation of various articles of the **Constitution of Kenya, 2010**. His livelihood is thus not only threatened, but his constitutional right to earn a living is also in danger of being taken away. It is thus his case that it is meet and just that this calamity should not befall him before his substantive motion is heard and determined.

5. The Respondents have opposed stay, arguing that granting the same will be tantamount to reversing the decision of the Respondents. It is also the Respondents' case that public interest demands that stay should not be granted, that public interest being the overwhelming need to do something about the rampant abuse of alcohol, particularly by the youth, and the need to curb the obvious danger posed to society by the illegal sale and consumption of dangerous, illicit brews.

6. The Respondents have also argued that in arriving at the challenged notice the letter and spirit of the **Constitution** and the law was followed, and that all tenets of natural justice were met.

7. Whether or not the challenged notice was arrived at without according the *Ex Parte* Applicant an opportunity to be heard, and whether or not that notice fell afoul of the **Constitution** and the law, will be the gravamen of the substantive motion.

8. For now, I have perused the impugned notice exhibited at paragraph 9 of the verifying affidavit (annexure "PGK 3"). It does not state why the Applicant's liquor license should expire early and not on 31/12/2015 as granted.

9. The Respondents' replying affidavit has not exhibited any document tending to show that the Applicant was accorded an opportunity to be heard before he was required to close his business.

10. In these circumstances, I hold that the dictates of justice demand that the **status quo** be maintained pending hearing and determination of the substantive motion, or until his license expires, whichever comes earlier. That **status quo** is that the *Ex Parte* Applicant shall continue to trade pending hearing and determination of the substantive motion or the expiry of his license. I will therefore grant prayer 4 of the application. The leave granted on 06/10/2015 to apply for judicial review shall operate as a stay of the challenged notice. **However, and for the avoidance of doubt, it is hereby declared that nothing in this order shall authorize the Ex-Parte Applicant to sell in his premises any illicit liquor howsoever described.** This clarification shall be part of the order of stay now granted. It is so ordered. Costs shall be in the substantive motion.

**DATED AND SIGNED AT MURANG'A THIS 24<sup>TH</sup> DAY OF NOVEMBER 2015**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 27<sup>TH</sup> DAY OF NOVEMBER 2015**