



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISC CIVIL APPLICATION NO 70 OF 2015 (JR)

1. KIBAOS SACCO LTD
2. PATRICK MUNGAI NGUNG'U
3. HENRY MAINA NJOROGE
4. DANIEL MACHARIA KAMAU
5. ELIZABETH WAIRIMU KABINGA
6. JOHN KIHARA KAGEMA
7. DANIEL KAMAU NGUGI.....*EX PARTE* APPLICANTS

VERSUS

KIGUMO SUB-COUNTY ALCOHOLIC

DRINKS REGULATION COMMITTEE.....RESPONDENT

RULING

1. On 29/09/2015 the *Ex Parte* Applicants were granted leave herein, pursuant to chamber summons dated 28/09/2015, to apply for judicial review and seek an order of *certiorari*

“...to remove to the High Court and quash the decisions of (the Respondent) expressed as the *Kigumo Sub-County: Alcoholic Drinks Licensing Decisions 2015/2016* published on the 17th September 2015.”

The necessary substantive motion was filed on 07/10/2015.

2. The *Ex-parte* Applicants also sought in prayer 2 of the application an order that such leave, if granted, do operate as a stay of the challenged decisions. The court directed that the said prayer be canvassed *inter partes*. Arguments were made on 27/10/2015. This ruling concerns that issue only.

3. I have considered the submissions of the learned counsels appearing, including the one decision cited. I have also read through the statutory statement and verifying affidavit filed together with the application for leave, and also the Respondent's **grounds of opposition** filed on 19/10/2015 and **replying affidavit** filed on 26/10/2015.

4. The *Ex Parte* Applicants have cried out that their applications for renewal of their trade licenses for retail of alcoholic drinks were refused and they were ordered to close their various businesses, without them being accorded an opportunity to be heard, and without any reasons being given for the refusal and requirement to close their businesses. Their businesses, in which they say they have invested heavily, are thus faced with imminent closure without adherence to basic tenets of natural justice, and in violence of various articles of the ***Constitution of Kenya, 2010***. Their livelihoods and those of their dependants, they further state, are thus not only threatened, but also that their constitutional right to earn a living is in

danger of being taken away. It is thus their case that it is meet and just that all these calamities should not befall them before their substantive motion is heard and determined.

5. The Respondent has opposed stay, arguing that granting the same will be tantamount to reversing the decision of the Respondent. It is also the Respondent's 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 Respondent has also argued that in arriving at the challenged decisions 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 decisions were arrived at without according the *Ex Parte* Applicants an opportunity to be heard, and whether or not those decisions fall afoul of the Constitution and the law, will be the gravamen of the substantive motion.

8. For now, I have perused the impugned decisions exhibited at paragraph 7 of the verifying affidavit (annexure "DMK 4"). In respect to those applications for renewal of licenses that were approved, various instructions are given, for instance, to get public health clearance certificate, etc. However, for those applications that were declined, only one instruction is given: "Close operations". No reasons have been assigned at all to the decision to decline the applications.

9. The Respondent itself has not exhibited in its replying affidavit any documents containing any reasons for declining the *Ex Parte* Applicants' applications for renewal of licenses; nor has it exhibited any documents tending to show that the *Ex Parte* Applicants were accorded any opportunity to be heard before their applications for renewal of their trading licenses were declined.

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. That *status quo* is that the *Ex Parte* Applicants shall continue to trade pending hearing and determination of the substantive motion. I will therefore grant prayer 2 of the application. The leave granted on 29/09/2015 to apply for judicial review (to seek an order of *certiorari*) shall operate as a stay of the challenged decisions. **However, and for the avoidance of doubt, it is hereby declared that nothing in this order authorizes the *Ex-Parte* Applicants to sell in their premises any illicit liquor however 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 5TH DAY OF NOVEMBER 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 13TH DAY OF NOVEMBER 2015