



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**Misc.Civil Application No.5 Of 2014**

In The Matter Of An Application For Leave To Apply For An Order Of Mandamus And Prohibition

And

In The Matter Of The Bomet County Government

And

In The Matter Of The Bomet County Alcoholic Beverage Control And Management Act, 2014

REPUBLIC.....APPLICANT

VERSUS

BOMET COUNTY GOVERNMENT.....RESPONDENT

**RULING**

The subject matter of this ruling is the Summons dated 8th July 2014 taken out by **Leonard Kosgei, Hillary Ngetich, Hudson Njunge, Duncan Kambi and Gladys Laboso** hereinafter referred to as the Exparte Applicants. In the aforesaid summons, the Applicants are seeking for leave to apply for the following orders:

1. **THAT the Application be certified as urgent and be heard ex parte in the first instance.**
2. **THAT the Applicants be granted leave to institute Judicial proceedings in the nature of mandamu directing the Respondent to issue the Applicants with Liquor Licenses and operating permits for their wines and spirits shops situated within Bomet County Township.**
3. **THAT the Applicants be granted leave to institute Judicial Proceedings in the nature of prohibition, prohibiting the Respondent or its agents, from unlawfully and/or in any other manner whatsoever interfering or disrupting the business operations of the Applicants, their employees, servants and/or agents in the course of operating, selling, disposing and/or dealing with licensed alcoholic drinks and that the Respondent be stopped from instituting, commencing and/or proceeding with criminal proceedings against the Applicants for operating their businesses without licenses pending the hearing and determination of this application.**
4. **THAT the leave granted do operate as a stay of the proceedings.**
5. **THAT the leave granted do operate as a stay of the criminal proceedings in the Principal**

**Magistrate's Court at Bomet Criminal Case No. 529/2014, 736/2014 and 531/2014 pending the filing, hearing and determination of the Judicial Review Application.**

**6. THAT the costs of this application be costs in the cause.**

The summons contains the grounds it is based. It is also accompanied by a statement of facts and is verified by the affidavit of Leonard Kosgei.

I have considered the oral submissions made by Mr. Gwaro learned advocate for the Exparte/Applicants and the material placed before me. I am convinced the Applicants have shown they have a prima facie case. I grant them leave of ten days to apply for the orders sought in prayers 2 and 3 of the summons.

I have also been asked in prayer 5 to direct that the order of leave do operate as a stay of the criminal cases. I think it is necessary to grant the orders to maintain the status quo pending the hearing of this dispute. Consequently, I grant orders sought in prayer 5 to last until the substantive application is filed, heard and determined.

**Dated, Signed and delivered in open court this 31st day of July, 2014.**

.....

**J.K.SERGON**

**JUDGE**

**In the presence of:**

Mbeche holding brief for Gwaro for Exparte