



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MISC. APPLICATION NO. 138 OF 2013 (JR)

In The Matter Of: The Application For Certiorari And Mandamus Against The Decision Of Embu West Sub-County, Alcoholic Drinks Regulation Committee Dated 31st July 2013

RONALD NYAGA KIURA.....
.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST
RESPONDENT

EMBU WEST SUB -COUNTY ALCOHOL DRINKS REGULATION COMMITTEE.....2ND
RESPONDENT

R U L I N G

The exparte applicant filed this Notice of Motion dated 10/9/2013 pursuant to leave granted by this Court on 21/8/2013. The application has been brought under Order 53 of the Civil Procedure Rules and 58 and Sections 9 of the Law Reform Act.

The applicant seeks an order of certiorari to remove into the High Court and quash the decision of the 2nd respondent dated 31/7/2013. The grounds are on the face of the application. The main ground being that the applicant was condemned unheard by the 2nd respondent.

In his supporting affidavit he annexed the following documents:-

- a. Letter revoking his licence (RNK2)
- b. The revoked licence (RNK3)
- c. The single business permit (RNK4)
- d. Clearance certificates from Public Health officers – RNK5 (a) & (b)

Both respondents were served on 11th September 2013 and 13th September 2013 respectively. I have seen a notice of appointment filed by the DPP on behalf of the 2nd respondent plus a replying affidavit by the Deputy County Commissioner Embu West. The Attorney General did not file any appearance. This complaint is civil in nature and the DPP had no business coming on record for the 2nd Respondent.

In determining this matter I will take into account the contents of the replying affidavit by the chairperson of the 2nd respondent. He insists that the applicant was given a hearing. And that he also obstructed

members of the 2nd respondent from inspecting his premises. And thirdly he used the premises to brew, distill and sell a local brew known as “machore”. He has annexed a copy of the chairperson's letter (EMM1) and a copy of the minutes of 30/7/2013, and District Public Health officer's inspection report. (EMM3).

On the date of hearing of this application there was no representation for the respondents inspite of having been given time to file their papers. The matter therefore proceeded exparte. Mr. Mugambi made submissions and explained that there had been no delay in filing the substantive motion.

I have considered the submissions, the affidavits and annexures. The material on record confirms that the applicant was the holder of an Alcoholic Drink Licence No. 35482 which expired on 30/6/2013 and was the subject of the meeting of 30/7/2013. This meeting was to recommend the renewal and/or revocation of the licence. As a result of the said meeting the applicant's licence was revoked. The chair of the 2nd respondent wrote the applicant a letter informing him of the revocation and the reasons for the revocation. The applicant avers that he was not given a hearing before the revocation of the licence.

The first issue is whether the Notice of Motion is properly before this Court. The leave was granted on 21/8/2013. The applicant was to file the Notice of Motion within 21 days. The same was filed on 11/9/2013. Time starts running from the time the orders are made. The 21 days expired on 10/9/2013. The Notice of Motion was filed on 11/9/2013 a day after the last day. This is forgivable. The application is therefore deemed as having been filed within time. I have also noted that the replying affidavit though sworn on 31/10/2013 is undated. I will also overlook that and proceed to deal with the real issues before this Court. In revoking the applicant's licence the 2nd respondent was acting under the provisions of Section 26 of the Alcoholic Drinks Control Act 2010. Section 26 of the said Act gives an elaborate procedure on how this process should be undertaken. Section 26(1) provides

Upon receipt of a report made under section 25 the District Committee shall

(a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned herewith, informing him that at a meeting of the District Committee to be held on a date to be specified, but not less than thirty days there from, the report will be considered by the District Committee.

Section 26(2)

Any licensee concerning whom a report is to be considered may appear in person or by advocate before the District Committee.

Section 26(3)

The District Committee, having duly considered the report and having heard the licensee, if he appears, may, if it thinks fit, cancel the licence of the licensee reported upon, or it may make such an order in respect of such licence or the licensed premises specified therein as, in the opinion of the District Committee, is necessary.

In all these provisions it is intended that the licensee must be informed of the contents of the reports and the date of the meeting. This is to enable him decide whether he/she should attend the meeting or not, and if he/she elects to attend whether it should be with an advocate or not. The record shows that vide a letter date 17/7/2013 (EMM4) the Ag. Deputy County Commissioner wrote a letter to all chiefs in Embu West Sub-County asking them to inform all applicants for licences to appear in person or be represented by an advocate. The chiefs were to inform their respective Assistant Chiefs to publicize the meeting of 30/7/2013 to all applicants in their respective Barazas.

Since the applicant has categorically denied having been heard or given an opportunity to be heard, all that the 2nd respondent was to do was to confirm that indeed the applicant was sent the various reports and had also been notified of the meeting of 30/7/2013. I have seen no proof of such notification or

delivery of the various reports relied on to revoke the licence.

The result of this is that the applicant was condemned unheard. All the reasons indicated in the letter dated 31/7/2013 (EMM1) would only be justified if the applicant had been heard. I therefore allow the application and grant the order of certiorari quashing the 2nd respondent's decision dated 31/7/2013.

Owing to the issues raised in the replying affidavit I am hesitant to issue an order of mandamus as prayed for by the applicant. I however direct the 2nd respondent to issue the applicant with a license for a three (3) months upon payment of the requisite fees. During this period the 2nd respondent should arrange for a re-inspection of the applicant's premises. Thereafter a meeting to be held to determine whether the applicant's licence will be renewed or not. The applicant must co-operate to enable the officers carry out their statutory mandate.

Each party to bear his/its own costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF NOVEMBER, 2013.

H.I. ONG'UDI

JUDGE

In the presence of:-

Applicant

Mr. Mugambi for Applicant

Njue CC