



**REPUBLIC OF KENYA**

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

**PETITION 110 OF 2011**

**ALICE OPEE  
SAMUEL MWANGI  
PATRICK MUYA (SUING ON THEIR OWN BEHALF AND ON**

**BEHALF OF PUBS, ENTERTAINMENTS & RESTAURANTS ASSOCIATION OF KENYA  
(PERAK).....PETITIONERS**

**VERSUS**

**THE MINISTER FOR STATE FOR PROVINCIAL ADMINISTRATION AND  
INTERNAL SECURITY.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY**

**GENERAL.....2<sup>ND</sup>  
RESPONDENT**

**RULING**

**Introduction**

1. The petitioners seek in this petition to challenge the provisions of the Alcoholic Drinks Control Act, 2010 and the regulations made thereunder.
2. By their application dated 7<sup>th</sup> July, 2011, the petitioners seek orders in the following terms:-
  1. **THAT** this Application be certified as urgent and the same be heard on priority basis.
  2. **THAT** pending the hearing of this application, this Honourable Court be pleased to issue conservatory orders restraining and/or prohibiting the police or any of the Respondents from harassing, intimidating or arresting the Applicants or their employees or closing down their business premises or in any other manner howsoever interfering with their carrying out their business activities in the name of implementing the provisions of the Alcoholic Drinks Control Act, 2010.
  3. **THAT** pending the hearing and determination of this application filed herein or the lapse of nine months from the date of commencement of the Alcoholic Drinks Control Act, whichever is earlier, the Applicants be allowed to conduct their liquor business operations as per the terms of their previous licenses without any interference.
  4. **THAT** pending the hearing and determination of the petition filed herein, this Honourable Court be pleased to issue conservatory orders restraining and/or prohibiting the police or any of the respondents

from harassing, intimidating, or arresting the Applicants or their employees or closing down their business premises or in any other name howsoever interfering with their carrying out their business activities in the name of implanting the provisions of the Alcoholic Drinks Control Act, 2010.

5. **THAT** these Applicants be awarded the costs of this Application.

3. The application is supported by the affidavit of Alice Opee sworn on the same day. The petition is filed on behalf of members of the Pubs, Entertainment and Restaurant Association of Kenya by Alice Opee, Samuel Mwangi and Patrick Muya.

4. The respondent did not file any response in the matter. When the parties were before the court on the 6<sup>th</sup> of December 2011, Counsel for the petitioners asked the court to give a ruling on the basis of the submissions filed in court. A Ms. Chilaka from the Attorney General's office indicated that she had no instructions on the matter but would take directions from the court. In the circumstances, this ruling is made on the basis of the petitioners' pleadings and submissions.

5. The petitioners' complaints arise with regard to the provisions of the Alcoholic Drinks and Control Act, 2010 enacted in August, 2010 which commenced in November, 2010. They also complain about the Alcoholic Drinks Control (Licensing) Regulations 2010.

6. The principle complaint is that some of the provisions in the Act and Regulations are oppressive, harsh, punitive and infringe or are likely to infringe on the petitioners' constitutional rights.

7. The petitioners allege that while they are keen to comply with the requirements of the Act and apply for licences under its provisions, they have been frustrated by the fact that some District Committees which are supposed to issue the licences have not yet been constituted.

8. The petitioners submit that on December 3 2010, in a notice carried in the Daily Nation Newspaper, the regulator, the **National Agency for the Campaign Against Drug Abuse (NACADA)** informed establishments that sold alcoholic drinks that they were to use the licences issued under the repealed Liquor Licensing Act. The petitioners were also given 9 months under the provisions of the Alcoholic Drinks Control Act 2010 to comply with the requirements for issuance of new licences. The petitioners argue that despite the notice and the 9 month timeline, they were being harassed by the police to produce licences in accordance with the Alcoholic Drinks Control Act 2010. They were being forced to pay non-statutory charges to police after being arrested.

9. The petitioners argue further that due to delay caused by formation of the District Committees, they were never issued with licences under the Act. The same people who have delayed in complying with the law for issuance of the licences are harassing the petitioners and interfering with their right to make a living.

10. The petitioners also complain about the cost of the licences and the conditions of the licences such as control of the hours of business. They argue that they stand to lose irreparably during the festive season should the court not issue the conservatory orders. They therefore ask the court to order that they continue to operate with the licences issued under the repealed Liquor Licensing Act pending the determination of the petition. They also ask that they be issued with licences under the Alcoholic Drinks Control Act per the stipulated statutory amount and not the exaggerated amounts that they are being asked to pay in order to be issued with licences. They also ask that licences be issued in accordance with the business that one operates and the hours set out on the regulations.

11. The Alcoholic Drinks Control Act, Act No 4 of 2010 was enacted into law and came into effect on the commencement date given in the Act namely November 22 2010. The objects of the Act are given at section 3 as being, among others, the control of the production, sale, and use of alcoholic drinks in order to protect the health of the individual in light of the dangers of excessive consumption of alcoholic drinks and to protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks.

12. Section 7 provides for the licensing of the manufacture, production, sale disposal or dealing with alcoholic drinks. At section 8, the Act provides for the formation of District Alcoholic Drinks Regulation Committees for each district in the country whose function shall be to issue licenses in accordance with the Act and to perform such other functions as may, from time to time be allocated to it by the Minister. The Act empowers the District Committee, in the discharge of its functions, to make inspection or other visits to premises at such times as it may deem appropriate.

13. The petitioners filed this petition in July, 2011. Their primary complaint is that the District Committees which should have been issuing licenses had not been formed and therefore the petitioners were being harassed for failure to obtain licences yet the body which should have been issuing licenses was not in place. On the 22<sup>nd</sup> of July 2011, Counsel appearing for the respondent informed the court that the Minister had gazetted the District Alcoholic Drinks Control Committees on the 9<sup>th</sup> of May 2011 and applications for licenses had already begun to be considered. The petitioners concede in their written submissions that the District Committees are now in place and that licenses have been issued.

14. Further, the 9 month period granted to the petitioners to obtain licenses under the Act has long expired. With both the regulatory mechanism in place and the time for obtaining the license having expired, I find no merit in this application and dismiss the same. Costs shall await the substantive hearing of the petition.

**Dated and Delivered at Nairobi this 3<sup>rd</sup> day of February, 2012**

**Mumbi Ngugi**  
**Judge**