



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**MISC. APP. NO. 61 OF 2011 (JR)**

**IN THE MATTER OF LEAVE TO APPLY FOR ORDERS OF PROHIBITION AND  
MANDAMUS**

**AND**

**IN THE MATTER OF THE ALCOHOLIC DRINKS CONTROL ACT, 2010**

**AND**

**IN THE MATTER OF MANUFACTURE AND DISTRIBUTION OF ALCOHOLIC DRINKS**

**IN THE MATTER OF LICENSING UNDER THE ALCOHOLIC DRINKS**

**AND**

**IN THE MATTER OF LICENSING UNDER THE ALCOHOL DRINKS CONTROL ACT**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE PERMANENT SECRETARY MINISTRY OF STATE FOR PROVINCIAL**

**ADMINISTRATION AND INTERNAL SECURITY.....1<sup>ST</sup> RESPONDENT**

**THE COMMISSIONER OF POLICE.....2<sup>ND</sup> RESPONDENT**

**THE PROVINCIAL COMMISSIONER CENTRAL PROVINCE.....3<sup>RD</sup> RESPONDENT**

**EX PARTE**

**ROSE WANGARI KINYUA**

**DAVID MUNENE KINYUA JR**

**DAVID MUNENE KINYUA T/A ROSKIN AGENCIES.....APPLICANTS**

**RULING**

The Applicant's prayer for Leave vide his *ex parte* application (Chamber Summons) dated 22/9/2011 was granted by consent.

The issue of the Leave operating as stay was argued by both learned Counsels. Mr. Okwaro says what the Applicants manufacture does not fall under section 31(1) (2a & b) of the Alcoholic Drinks Control Act. He wants this court to allow the Applicants to continue packaging "*Opaque bear and the wine*" their style and distributing them. The State says its not known what the contents are.

One of the annexures filed herein shows that Lazarus Chomba Gichima has been charged for selling the Kabuga & Viena in plastic bottles instead of glass. Section 31 specifically talks of the alcoholic drink known as Changaa or any other distilled alcoholic drink. The licences availed to the court do not explain how these two kinds of drinks should be and/or are packaged.

It's the assertion by the Applicant that these 2 drinks are fermented and not distilled and hence not subject to section 3(2) (b) of the Act.

This too is not in the Licences so I take it to be a matter for real evidence. There is nothing from KEBS to confirm what they are. This will either be dealt with in the Criminal case or during the hearing of the substantive application.

The Respondents are however cautioned that as they discharge their duty they should not be seen to harass the Applicants or any other law abiding citizens.

The prayer for leave to operate as stay is therefore not granted.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 18<sup>th</sup> DAY OF NOVEMBER 2011.**

**H. I ONG'UDI  
J U D G E**