

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 137 of 2009

FAI AMARIOS CO LTD.....APPELLANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

RULING

The subject matter of this ruling is the motion dated 2nd February 2009 where upon the appellant/applicant seeks for the following orders;-

1. ***The Applicant's Liquor Licence which expired on 31st December 2009 be renewed until the appeal herein is heard and determined. The application is said to be based on section 27(2) of the Liquor Licence Act. The Licence Liquor in court through the Attorney General opposed the motion by filing grounds of opposition.***

I have considered the grounds stated on the face of motion and the facts deponed in the supporting affidavit. I have also considered the grounds of opposition filed against the motion. I have further considered the oral submissions of the learned counsels from both sides. It is the submission of Mr. Mwaniki learned advocate for the appellant/applicant that the respondent is bound to accept payment of license fees upon the filing of appeal under section 18(2) of the Liquor Licence Act. The respondent declined to accept payment nor give the appellant a temporary licence pending appeal. On its part the respondent has accused the applicant of not complying with section 27(2) of Liquor Licence Act. In other words it is alleged that the applicant has failed to forward payments of fees for renewal of licence pending appeal. It is the respondent's submission that this court can only grant a licence upon the determination of appeal. The issue in dispute is whether or not this court has the discretion to make the order sought under section 27(2) of Liquor Licence Act. I think it is important to reproduce the contents of the aforesaid section in order to appreciate the import of the law. Section 27(2) provides as follows;-

“If the renewal of a licence is refused and the licensee appeal under section 18 against the refusal, the licensee shall on payment of the fee for the appropriate licence be entitled unless the minister directs otherwise, to a renewal of the licence which is the subject of the appeal to be valid only until the appeal has been determined, such licence to commence on the day after determination of his existing licence: provided that if the appeal is refused the licensee shall be entitled to a refund of the proportionate of the fees paid.”

It is categorically averred in the affidavit of Naftaly Mwaniki sworn in support of the motion that the respondent has refused to receive payment of fees to renew the licence pending appeal despite several requests. Those averments have not been controverted by any affidavit. It is submitted from the bar that the applicant has failed to pay the licence fee. In view of the fact that the deponed allegations have not been denied I am convinced that the applicant is entitled to the orders. I hereby issue the order directing the 1st respondent to accept payment of fees for renewal of licence pending appeal. Cost of the application is awarded to applicant.

Dated and delivered at Nyeri this 23rd day of April 2010.

J.K. SERGON

JUDGE