

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL APPEAL NO.151 OF 2003

SOUTH TETU HOTELS & BAR LIMITED.....APPELLANT

VERSUS

LIQUOR LICENSING COURT NYERI DISTRICT

THROUGH THE ATTORNEY GENERAL.....RESPONDENT

R U L I N G

By a notice of motion dated 3rd March 2004, South Tetu Hotels and Bars Limited (hereinafter referred to as the Applicant) seeks to have the decision of the Nyeri Liquor licensing court dated 10th November 2003 cancelling the applicant's club liquor license on Plot No. Nyeri Block 11/60 stayed under Section 27(2) of the Liquor Licensing Act Cap 121 Laws of Kenya pending the hearing and determination of his appeal.

The applicant also seeks an order for the Respondent to be ordered to supply the court with certified copies of the proceedings and decision of the court sitting on 10th November 2003.

The application is supported by an affidavit sworn by John Mwangi Waiganjo the applicant's advocate wherein it is contended that the Respondent acted contrary to the rules of natural justice in refusing to review the applicant's licence without any justifiable cause and in further refusing to avail copies of the proceedings and decision of the Liquor Licensing Court.

In response to the application Michael W. Mwangi, the Chairman of the liquor licensing Board in Nyeri District has sworn an affidavit in which He explains that the Court decided to downgrade the licence of the applicant to have its business closed at 11.00 pm and that the decision was taken due to the rising level of insecurity in Nyeri town. He therefore maintains that the licence of the applicants was not cancelled nor have they refused to renew the licence but the applicant is simply refusing to abide by the conditional renewal given. A copy of the relevant minutes of the liquor licensing Court has been availed.

Section 27(2) of the Liquor Licensing Act Cap 121 states as follows:

(2) If the renewal of a licence is refused and the licensee appeals 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 the determination of his existing licence, provided that if the appeal is refused the licensee shall be entitled to a refund of a proportionate part of the fee paid."

The question is whether the applicant's application for renewal of its licence was refused such that an order of stay can issue under the above quoted provisions.

It is apparent from the affidavit of the applicant's advocate and the memorandum of appeal filed herein that the Respondent has not cancelled or refused to renew the applicant's licence but has granted the applicant a Liquor Licence of General Retail Liquor Licence instead of the applicant's previous club liquor licence. The Respondent's action which is subject of the appeal is not therefore cancellation or

refusal to renew a licence but the downgrading of a licence. This does not appear to be covered under Section 27(2) of the Liquor Licensing Act, and it would not therefore be appropriate to issue a stay under that provision. I would accordingly reject the applicant's prayer in this regard.

As regards an order to the Respondent to supply copies of the proceedings of the liquor licensing court, although copies of the same are annexed to the replying affidavit sworn by the Chairman of the Liquor Licensing Board, it is necessary that properly certified copies of the proceedings and decision of the court sitting on 10th November 2003 be availed to enable the applicant pursue his appeal. I do therefore order that certified copies of the proceedings and decision of 10th November 2003 be supplied to the Applicant's advocate within 14 days from the date of service of this order.

To this extent only does this application succeed.

Dated, signed and delivered this 3rd day of June 2005.

H. M. OKWENGU

JUDGE