



**Vaxx One Thousand Limited v Uasin Gishu Alcoholic Drinks
Control Board & another (Judicial Review Miscellaneous Application
E011 of 2023) [2025] KEHC 3250 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3250 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E011 OF 2023**

RN NYAKUNDI, J

FEBRUARY 21, 2025

**IN THE MATTER OF THE APPLICATION BY VAXX ONE THOUSAND
LIMITED FOR ORDERS OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010, THE
NATIONAL ENVIRONMENTAL MANAGEMENT AND COORDINATION
ACT, ACT NO. 8 OF 1999, ALCOHOLIC DRINKS ACT NO.4 OF 2010,
UASIN GISHU COUNTY ALCOHOLIC DRINKS ACT NO. 4 OF 2020 AND
THE CIVIL PROCEDURE ACT, CAP 21 LAWS OF KENYA**

BETWEEN

VAXX ONE THOUSAND LIMITED APPLICANT

AND

**UASIN GISHU ALCOHOLIC DRINKS CONTROL BOARD .. 1ST RESPONDENT
COUNTY GOVERNMENT OF UASIN GISHU 2ND RESPONDENT**

RULING

1. What is pending before me for determination is a Notice of Motion Application dated 21st September 2023 where the Applicant is seeking the following orders:
 - a. An order for certiorari to remove into the High Court and quash the decision of the first respondent made on the 18th day of September 2023 suspending the Applicant's Hotel and Night Club licenses for being unlawful, illegal ultra vires and directing its revocation.



- b. An order for prohibition be issued prohibiting the Respondents from suspending, cancelling, withdrawing and in any other manner whatsoever implementing, enforcing or interfering with the Applicant's Hotel and Night Club licenses issued on 18/05/2023 and/or interrupting the Applicant's operations deriving from the respective licenses.
 - c. Costs of this application be provided for.
2. The Application is based on the grounds on the face of it among others:
- a. The applicant is a limited liability company incorporated in the Republic of Kenya,
 - b. The applicant is duly licensed to operate as a hotel and night club.
 - c. The applicant complied with all pre-qualification requirements including approval by the County Alcoholic Drinks Regulations Committee and National Environmental Management Authority.
 - d. The Applicant has invested heavily and has been in operation for over a year.
 - e. The first respondent's director has purported to suspend the applicant's licenses without strict adherence to the relevant national and county statutory provisions.
 - f. The first respondent neither has legal authority nor right to cancel or suspend the applicants' licenses.
 - g. The power to cancel and, suspend and/or deal in any manner with an issued license exclusively vested in the County/Alcoholic Drinks Regulations Committee.
 - h. The first respondent had no power and/or authority to suspend any licenses(s)
 - i. The direction by the respondents is thus unlawful, illegal and ultra vires.
 - j. The first respondent's Director being a public servant is bound by law to guarantee fair action to all licensees and protect the right to free business enterprise administrative.
 - k. The decision made by the first respondent and sanctioned by the second respondent is discriminative and unfair as against the applicant.
 - l. The applicant is poised to suffer extensive losses and damages in the event the decision is not quashed and the respondents prohibited from enforcing the infringement.
 - m. It is fair and just that leave be granted to enable the applicant pursue a review of the respective decision.
 - n. Granting the orders sought shall serve to secure the applicant's Constitutional and Statutory rights.
3. The Application is supported by the annexed Affidavit dated 21st September 2023 sworn by Isaac Nayere, the Director of the applicant which contents I have read thereto.
4. The Application is opposed by the Replying Affidavit dated 17th January 2025 sworn by Koiya Arap Maiyo, the Director, Alcoholic Drinks Control Board where he avers as follows;
1. That from the onset, I wish to state that the Application as set out by the Applicant has no merit and only intends to undermine the Respondent's Administrative Powers.



2. That the Application dated 21st September, 2023 should be dismissed on the grounds that the applicant's license has already expired and hence the matter is overtaken by events.
3. That the Uasin Gishu Trade and Licensing Act requires all licensed traders to pay and operate the said premises within stipulate laws and regulations.
4. That the Uasin Gishu County Drinks Control Act, 2014 establishes licensing committee whose mandate is to ensure that effective public participation is conducted before license to operate a pub, bar or club is issued.
5. That it is for the above reason that a public participation exercise was conducted and it was established that the said premises was situated in a residential area and thus was causing nuisance.
6. That the said exercise was conducted by the residents of Annex Centre and the same was attended by Management of the Applicant who acknowledged that there was need for them to deal with the issue of Noise Pollution.
7. That the said meeting and its resolutions were captured in minutes of a meeting held on 12th August 2023.
8. That upon such resolutions being made, the management of the Applicant and/or neglected to implement the same and as such, the residents of Annex Centre petitioned by the County Government to halt operations of the club if found to be in breach of the Law under the Environment Management Coordination Act among other County Regulations.
9. That similar petitions were done to the Deputy County Commissioner, Kesses Sub County and National Environment Management Authority (NEMA).
10. That the Applicant received a Notice dated 14th August 2023 to correct the Noise Defects from the National Environment Management Authority (NEMA)
11. That the said Notice from National Environment Management Authority (NEMA) was not acted on by the applicant and no evidence has been led to show that the same was acted on satisfactorily.
12. That the Applicant has attached as an annexure an Environmental Impact Assessment (EIA) Report from the National Environment Management Authority (NEMA) dated the 24th April, 2024 allowing it to operate as a Club but have not availed any response or action addressing the issues raised in the Notice by the Authority dated 14th August 2023.
13. That the decision being challenged by the Applicant dated 18th September 2023 is in relation to the temporary suspension of the Applicant's license based on the complaint received from the residents of Annex Estate and in compliance with section 30 of the Uasin Gishu County Drinks Control Act, 2014.
14. That liquor licensing is a devolved function pursuant to the 4th Schedule of the Constitution of Kenya 2010, and the 1st Respondent has the mandate to suspend any licenses issued by it pursuant to the provisions of the Uasin Gishu County Drinks Control Act, 2014.
15. That be that as it may, this suit is overtaken by events since the Applicant's license has expired and there is a new process now of renewing licenses and the aspect of qualification to be issued with a Club License shall be dealt with afresh.



16. That this court being used to issue orders that are blanket and sweeping in nature aimed at arm twisting the Respondents to issue operating licenses to the Applicant without following the procedure provided for in the Uasin Gishu County Drinks Control Act, 2014.
17. That it is apparent from the foregoing and from a keen look at the prayers sought the Applicant in usurping the mandate of the Respondent bestowed under the Constitution and legislation.
18. That the Applicant has proceeded to use the orders of this Honourable Court to even impede the process of due diligence and scrutiny during the process of renewal of its club license as shown by a Letter dated 16th February, 2024 addressed to the 2nd Respondent.
19. That it is the best interest of the public that the application be dismissed and the Respondent be allowed to carry its constitutional mandate without undue supervision in the circumstances by the Court.

Analysis and Determination

5. This is an application of Judicial Review, a constitutional remedy entrenched in Article 23 of the Constitution of Kenya 2010. It is the Applicant's view that the cancellation of the operating license of his club trading in the name and style of Vaxx One Thousand Limited by the 1st Respondent herein Uasin Gishu Alcoholic Drinks Control Board was illegal, irrational and procedurally improper to warrant a remedy in judicial review. The Court in *Pastoli Vs Kabale District Local Government Council & 3 Others* [2008] EA 300 articulated the following guiding principles on judicial review remedies as follows;

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision....”

6. By way of definition, the conceptualization of Judicial Review under Order 53 of the Civil Procedure Rules, section 7 of the Fair Administrative Action Act as entrenched in Article 23 of the Constitution of Kenya 2010 is a branch of Law that is concerned with control by the Courts of the powers, functions and procedures exercised by other organs of the state and devolved units discharging public functions. Essentially, the remedy of Judicial Review is invoked by the parties who are dissatisfied with excesses and overreach of those public bodies or authorities purporting to exercise statutory jurisdiction concerning the day to day governance. In Article 47(1) of the Constitution of Kenya 2010, it guarantees a right of fair administrative action to every citizen or other residents within our borders that invoking or undertaking their mandate the public/administrative bodies in executing their mandates under the statute do not violate any fundamental rights and freedoms. The core of Article 47(1) of



the Constitution is that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

7. The canons of Judicial Review are clearly set out in the case of Council For Civil Services Unions Vs Minister For Civil Services (1985) AC 374 at 401D in which Lord Diplock stated as follows;

“Judicial Review I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality and the third “procedural impropriety...” By illegality as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it...By “irrationality” I mean what can now be succinctly referred to as ‘Wednesbury unreasonableness’. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that not sensible person who applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”

8. Following the enactment of the Constitution of Kenya 2010 which incorporated the Bill of Rights on fundamental Rights and Freedoms, the traditional definition of Judicial Review as known in common law received special recognition within the provisions of Article 10, 23 and 47 of the Constitution as to what constitutes Fair Administrative Action as a constitutional imperative found its way to the enactment Fair Administrative Action Act 2015. For our present purposes, I find it necessary to lift the provisions of section 7(2) of the statute which provides that;

- (2) A court or tribunal under subsection (1) may review an administrative action or decision, if-
- (a) the person who made the decision-
 - (i) was not authorized to do so by the empowering provision;
 - (ii) acted in excess of jurisdiction or power conferred under any written law;
 - (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;
 - (iv) was biased or may reasonably be suspected of bias; or
 - (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;
 - (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - (c) the action or decision was procedurally unfair;
 - (d) the action or decision was materially influenced by an error of law;
 - (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
 - (f) the administrator failed to take into account relevant considerations;
 - (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;



- (h) the administrative action or decision was made in bad faith;
- (i) the administrative action or decision is not rationally connected to-
 - (i) the purpose for which it was taken;
 - (ii) the purpose of the empowering provision;
 - (iii) the information before the administrator; or
 - (iv) the reasons given for it by the administrator;
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
- (k) the administrative action or decision is unreasonable;
- (l) the administrative action or decision is not proportionate to the interests or rights affected;
- (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;
- (n) the administrative action or decision is unfair; or
- (o) the administrative action or decision is taken or made in abuse of power.

9. In a nutshell, the court in *R Vs Public Procurement Administrative Review Board Ex-parte Rongo University* [2018] eKLR went further to provide what should inform the Court in exercising discretion to issue the prerogative writs of judicial review. On illegality the courts have stated that that;

11. An administrative decision is flawed if it is illegal. A decision is illegal if it: - (a) contravenes or exceeds the terms of the power which authorizes the making of the decision; (b) pursues an objective other than that for which the power to make the decision was conferred; (c) is not authorized by any power; (d) contravenes or fails to implement a public duty.

Put differently, a failure to exercise that power where the exigencies of a particular case require it, would amount to undermining the legality principle which, is inextricably linked to the Rule of Law.

10. The indicia of Unreasonableness. There are at least 4 characteristics which are reliably associated with unreasonableness

- a. Oppressiveness- the fact that a decision imposes costs on an individual disproportionate to its benefits, suggests unreasonableness;
- b. Incoherence- that an authority adopted an end but not the necessary means to that end indicates unreasonableness;
- c. Inconsistency- that a present decision is inconsistent with a prior decision also suggests that the present decision is unreasonable;
- d. Lack of stated reasons- the scenario here is that if all of the prima facie reasons seem to point in favour of a decision and if the authority/public body gives no reason whatever for taking a contrary cause, the court may infer that he has no good reason. The consequence of it is that the power exercised is unreasonable as a result.



11. Improper purpose is applicable when the making of the decision was an improper exercise of the power conferred by the statute, policy or law in pursuance of which it was purported to be made in that there was an exercise of a power for a purpose other than a purpose for which a power is conferred. (See also Associated Provincial Picture Houses Ltd Vs Wednesbury Corp [1948])
12. The Application by the petitioner which was filed on 21st September 2023 supported and verified by the evidence on Affidavit of Isaac Nayere highlights the following unfolding chain of events setting out the basis of this petition;
 - a. That the Applicant is a limited Liability Company incorporated in Kenya under the *Companies Act*, enacted in the year 2015.
 - b. That the Applicant is licensed to operate as a hotel and night club within Eldoret town with its premises located within the Annex area along the Eldoret-Nakuru Highway
 - c. That the applicant's establishment occupies approximately a quarter (1/4) an acre and constructed on commercial property along the respective highway.
 - d. That prior to the issuance of the impugned licenses, the Uasin Gishu Alcoholic Drinks Regulations Committee, in accordance with section 1(a) (2) and 3(b) of the Uasin Gishu *Alcoholic Drinks Control Act* No. 1 of 2014, conducted an inspection of the premises and undertook public participation as required by law.
 - e. That upon satisfaction, the Alcoholic Drinks Regulations Committee issued the licenses as vested with the power, under section 11(3) of the Act.
 - f. That I am informed by my Advocates on record that section 4(1) of the Act establishes the Uasin Gishu Alcoholic Drinks Control Board (ADCB) as a body corporate with perpetual succession, capable of suing and being sued in its name. Section 4(2) sets out the functions of the board, which is chaired by a Director.
 - g. That according to the Act, the Director's function is mainly the administration of the Uasin Gishu Alcoholic Drinks Control Fund as set out under Section 4 of the Act.
 - h. That I am aware that the alleged complaint letter annexed in (13) above does not qualify as a report within the meaning contemplated in the Act as such fails to satisfy the criteria and procedure set out in section 30 of the Act.
 - i. That I am advised by my Advocates on record that noise pollution is regulated under the *Environmental Management and Co-ordination Act* (1999) which establishes the National Environmental Complaints Committee in section 31, thereof.
 - j. That I am aware that to date, no complaint or penalty has since been raised by the National Environment Management Authority against the applicant regarding its operation(s) or violation of the rules laid our rules and guidelines.
 - k. That I am thus aware that the decision of the first respondent is unlawful, illegal and ultra-vires, requiring the Court to intervene and to quash, revoke and prohibit the first respondent's action, which amounts to total abuse of administrative power and function.
13. The Affidavit by the Respondent filed by KOIYA ARAP MAIYO, the Director, Alcoholic Drinks Control Board was in material contrast with that of the Petitioner as premised elsewhere above in this Ruling. As reflected in the decision stated above, this court can only interfere with the Act of the Respondents if it is shown that the authority has contravened the law. For our purposes, the threshold



issue is as well stated in section 7(2) of the *Fair Administrative Action Act*. The main complaint in this application, in so far as the petition is concerned is that the 1st Respondent purported to usurp the powers of National Environmental Management Authority (NEMA) to exercise its discretion wrongly against the Petitioner culminating in the cancellation of his business license.

14. The cancellation of this license continues to impact heavily on the applicant's social economic rights guaranteed in Article 43 of the *Constitution*. The Respondents in exercising statutory jurisdiction has not demonstrated that there was compliance with the provisions of Article 47 on the Fair Administrative Action protocols and Article 50 of the *Constitution* on the right to a fair hearing to the extent he took refuge under the doctrine of exhaustion and the import of the provisions section 7 of the Environment Management and Coordination Act. This is an application of judicial review of the refusal of the Respondents to abide by the due process clauses under Article 50 of the *Constitution* the basis of which a drastic decision was undertaken to close down the business premises of the applicants.
15. The public interest in the vindication of the rule of law and fair trial rights undermines the very existence of the prerogative jurisdiction and its supervisory role over inferior courts and tribunals and other quasi-judicial bodies ceased with the mandate of decision making. Many of the problematic issues which arose from this application concerns the procedure adopted by the Respondents which decision making body ignore the claims by the applicant and the legal validity of it was improper, unreasonable and irregular to say the least. It is the requirement of Article 47 of the *Constitution* that for good administration, the regular flow of consistent decisions made by a public authority, institution, inferior courts or tribunal must be published with reasonable dispatch to the affected persons concerned for him or her to know where they stand and how they can order their affairs in the light of the impugned decision.
16. Looking at the wider scene of the chain of events, as between the Applicant and the Respondents, the procedures followed in respect of this case the Respondents failed to strike a balance between the competing interests inherent in the public sphere on the business model being moderated by the Applicant.
17. As a consequence, therefore the Respondents in making the impugned decision against the applicant failed to take into account the relevant matters which it had the jurisdiction to do so and in essence failed in error by arriving at a decision which was unreasonable and which no reasonable statutory authority could ever have come to it. It is also clear from the affidavit evidence, given the weight issues involved as between the applicants and respondents, rules of natural justice were violated and the Respondents action occasioned prejudice and injustice to the applicant's fundamental rights and freedoms.
18. The issue as to whether the decision taken by the respondents violated the principles of proportionality or not is a matter to be tested on the probative evidence provided by the applicant. This doctrine is better defined De Smith on judicial review of administration action 5th Ed. Pg. 94 as a principle requiring the administrative authority, when exercising discretionary power to maintain a proper balance between any adverse effects which its decision may have on the rights, the liberties or interests of persons and the purpose which it pursues. This is a question of ramification of the decision which sometimes transcends that individual, person or organization defined by the decision maker on the face value. The case *Newham v. Khatun & Iqbal* 2004 EWCA at Pg. 55 the court made the following observations:

“Clearly a public body may choose to deploy powers it enjoys under statute in so draconian a version that the hardship suffered by the affected individuals in consequence will justify



the court in condemning the exercise as irrational or perverse at all events it is plain those oppressive decisions may be held to be repugnant to compulsory public law standards.”

19. The model of proportionality review of a court properly constituted like the one I am presiding over must be guided by the following guidelines:
 - a. Legitimacy
 - b. Suitability
 - c. Necessity
 - d. Proportionality in the strict sense of a challenged measure by the applicant
20. It is unequivocally clear from the evidence tendered by the applicant that there is a qualified legal rights enjoyed by the applicant in this petition. That the imposition of the decision maker herein being the respondents is deemed to be disproportionate to the legitimate purpose of which it intended to justify the measures taken to pursue the ends of justice of reducing noise congestion and the public safety. This court has weighed the benefits of the challenged measure in terms of protected rights of the interest of the applicant and the authority to act by the respondents was in excess of jurisdiction
21. In this case, I am satisfied that the Applicant has managed to provide material evidence before the court disclosing clearly and vividly that prerogative writs of judicial review be granted in the form of prohibition and certiorari.
22. The costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 21ST DAY OF FEBRUARY, 2025.

.....

R. NYAKUNDI

JUDGE

