



REPUBLIC OF KENYA



KENYA LAW
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**Faith Wanjiru Maina t/a Lucky Pub Thamanda v OCPD, Kikuyu Police Station & another
(Miscellaneous Application E012 of 2024) [2025] KEHC 2818 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E012 OF 2024**

A MSHILA, J

MARCH 7, 2025

**IN THE MATTER OF AN APPLICATION BY FAITH WANJIRU MAINA T/A LUCKY
PUB THAMANDA FOR LEAVE TO COMMENCE PROCEEDINGS IN THE NATURE
OF JUDICIAL REVIEW**

AND

**IN THE MATTER OF SECTIONS 4(1), 4(3), 4(4), OF THE FAIR ADMINISTRATIVE
ACTION ACT, NO.4 OF 2015**

AND

**IN THE MATTER OF ARTICLES 10(1), 10(2) (B0, 47 (1) OF THE CONSTITUTION OF
KENYA**

AND

IN THE MATTER OF KIAMBU COUNTY DRINKS CONTROL ACT (REVISED 2022)

AND

**IN THE MATTER OF UNLAWFUL CLOSURE OF BUSINESS BY THE OCPD
KIKUYU POLICE STATION**

BETWEEN

FAITH WANJIRU MAINA T/A LUCKY PUB THAMANDA APPLICANT

AND

OCPD, KIKUYU POLICE STATION 1ST RESPONDENT

DIRECTORATE OF LIQUOR CONTROL & LICENSING, KIAMBU

COUNTY 2ND RESPONDENT



RULING

1. The Applicant has brought the instant judicial review application dated 9th May, 2024 against the Respondents seeking the following orders;-
 - a. An order of certiorari to quash the decision of the 1st and 2nd Respondents of unilaterally and unprocedurally shutting down the Applicant's business;
 - b. An order of injunction restraining the 1st and 2nd Respondents whether by themselves, servants, agents or whosoever otherwise from arresting, harassing or intimidating the applicant when operating her business;
 - c. An order of prohibition to prohibit the 1st and 2nd Respondents from closing the Applicant's business for the year 2024;
 - d. And order of prohibition to prohibit the County Commander, Kiambu County, OCPD Kikuyu Police Station and other police officers within the same jurisdiction from arresting, harassing or intimidating the Applicant while operating the business;
 - e. An order of stay of enforcement of the decisions of the 1st and 2nd Respondents to shut down the Applicant's business without adherence to laid down procedures;
 - f. The costs of this suit be paid by the 1st and 2nd Respondents.
2. The application is premised on facts stated in the substantive application, the statutory statement and the verifying affidavit in the application for leave dated 6th May, 2024 as follows;-
 - a. The Applicant has been running a bar and restaurant business known as Lucky Pub Thamanda in Muguga area within Kiambu County for the past three years in compliance with the law. She has been following the requirements of the [*Kiambu Alcoholic Drinks Control Act*](#) and the regulations thereunder.
 - b. She has been issued with the necessary annual licences upon confirmation that her business is in compliance with the law. The business is her only source of income as the family's sole breadwinner.
 - c. Her business has fully complied with the necessary requirements and the payment of fees for the year 2024 but the 2nd Respondent has declined to make a decision on the Applicant's renewal application contrary to Section 21 (4) of the [*Kiambu County Alcoholic Drinks Control Act*](#).
 - d. On 3rd May, 2024 the Officer Commanding Kikuyu Police Station made a verbal declaration that the Applicant's bar and restaurant business should be closed with immediate effect. The business was closed on the same day by the police officers from Kiambu Police Station and it remains closed.
 - e. The unprocedural and unfair closure of the business has caused the Applicant to incur huge financial losses and undergo mental and emotional anguish.
 - f. The High Court has supervisory jurisdiction over the 1st and 2nd Respondent under Article 165 (6) of the [*Constitution*](#) and power to make any such orders or give directions appropriate to ensure the fair administration of justice.



- g. Unless the orders sought are granted, the 1st and 2nd Respondents will proceed to permanently close down the Applicant's business which will cause irreparable damage to the Applicant.
3. The application was canvassed by way of written submissions. Although the Respondents were properly served with the application and the Applicant's submissions, they chose not to participate in the matter.

Applicant's Submissions

4. The Applicant stated that the 1st Respondent is an officer mandated by the [National Police Service Act](#) to deal with security matters and not closing and opening bar and restaurant businesses. The verbal decision by the officer to close the Applicant's business is ultra vires and a blatant violation of the law.
5. The 2nd Respondent is an office established under the Kiambu County Alcoholic Drinks Act with a mandate to issue annual licences to bar and restaurant businesses operating within Kiambu County. The 2nd Respondent has been issuing annual licences to the Applicant for all the years that she has been in business. The 2nd Respondent has without cause denied the renewal of the Applicant's licence. She was not given an opportunity to defend herself regarding the decision nor was she given any reasons for the decision.
6. The Applicant relied on the case of *Council for Civil Service Unions v Minister for Civil Service* (1985) A.C 374, Pharmaceutical Manufacturers Association of South Africa in *re-exparte president of South Africa*- 2000 S.A 674 CC, *Republic v Speaker of the Senate and Another Ex-parte Afrison Export Limited* (2018) eKLR, *Republic v Stanley Mambo Amuti* (2018) eKLR, the provisions of order 53 of the [Civil Procedure Rules](#) and Sections 8 and 9 of the [Law Reform Act](#) Cap 26.

Issue for Determination

7. This matter raises only one issue for determination;
 - i. Whether the Judicial review in form of the prerogative orders of Certiorari and Prohibition are available to the *Ex – parte* Applicant.

Analysis

Whether the Judicial review in form of the prerogative orders of Certiorari and Prohibition are available to the Ex – parte Applicant.

8. Judicial Review is the process of checking administrative excesses through judicial intervention. It is a concept of administrative law relating to decisions of offices or organs of Government or Public Authorities which may affect the rights or liberties of the citizens. It is entrenched in Article 47 of the [Constitution](#) which provides for fair administrative action. The [Fair Administrative Action Act](#), 2015 was enacted to give effect to Article 47 of the [Constitution](#) and it is the statutory framework governing judicial review and the administrative law. The procedural law is found in provisions of Order 53 Rules 1 to 7 of the [Civil Procedure Rules 2010](#).
9. Equally important in judicial review are the provisions of Sections 8 and 9 of the [Law Reform Act](#) Cap 26 of the Laws of Kenya. These provisions allow the court to issue prerogative writ of Certiorari, which brings into this court to quash a decision which is ultra vires. Ordinarily a writ of prohibition intended to forbid or prevent an action by a public officer from taking place would be granted together with Certiorari. The two are similar remedies but prohibition is more prospective than retrospective. Certiorari looks at the past and prohibition looks at the future.



10. In the book of “*Administrative Law*”, Sir. W. Wade and C. Forsyth, Page 605 noted that:-

“I can see no difference in principle between Certiorari and Prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari. I think that prohibition will lie to restrain it from so exceeding its jurisdiction.

Although prohibition was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective and equally often used, to prohibit the execution of some decision already taken but ultra vires. So long as the tribunal or administrative authority still had power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by prohibition. Certiorari and prohibition frequently go hand in hand, as where certiorari is sought to quash the decision and prohibition to restrain its execution. But either remedy may be sought by itself.”

11. The case of *Municipal Council of Mombasa V Republic, Umoja Consultants Ltd*, Nairobi Civil Appeal No.185 of 2007(2002) eKLR, the Court of Appeal divulged the purpose of judicial review as follows:-

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at. Did those who make the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.

12. The case of Justice Kasule in the Uganda case of *Pastoli V Kabale District Local Government Canal & Others* (2008) 2EA 300 at pages 300-304 elaborated circumstances under which orders of Judicial Review can be issued 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 the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision 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 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 to act 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 legislature instrument by which such authority exercises jurisdiction to make a decision. (*Al-Mehidswi...v ...Secretary of State for the Housing Department* (1990) AC 876”.

13. In the case of *Kenya National Examination Council V Republic Exparte Geoffrey Gathenji & 9 Others*, Nairobi Civil Appeal No.266 of 1996 the Court held as follows: -

“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See *Halsbury’s Law of England*, 4th Edition vol.1 at Pg.37 paragraph 128.”

14. It is very crucial to note that the Applicant’s claim is uncontroverted. Nevertheless this court has a duty to critically analyze the facts vis-a-vis the principles of the law applicable to judicial review. Applying these principles to the instant case, the 1st and 2nd Respondents closed the Applicant’s bar and restaurant business through a verbal declaration by the 1st Respondent, a senior police officer. There are no provisions in the National Police Act or any other law giving power to police officers to arbitrarily close somebody’s business without cause. The Applicant herein has been issued with annual licences by the 2nd Respondent for all the period that she has been in business. Her application for renewal for the year 2024 has not been determined. Does this automatically give the Respondents the authority to close the Applicant’s business?
15. Application for renewal of a licence is governed by Section 21 of the *Kiambu County Alcoholic Drinks Control Act*, 2018. Section 21 (5) provides;-
- “(5) Where an application for renewal of a licence has been made in accordance with this Act and by the date of expiration of the licence no decision has been made thereon, such licence shall continue in force until the decision is made.”
16. The Applicant’s application for renewal of her licence was pending determination by the 2nd Respondent. If her previous application had lapsed, Section 21 (5) of the *Kiambu County Alcoholic Drinks Control Act* would apply. The import of the said provision is that her licence for the year prior would continue to be in force until her application for renewal is considered.
17. No reasons were given for non-renewal of the licence nor was the Applicant asked to comply with any further or new requirements for renewal of the licence. The police officers did not have the power to close the Applicant’s business. If it was the 2nd Respondent that closed the business for lack of a licence, the decision was clearly unprocedural because the Applicant was not involved or given an opportunity to defend herself in the matter. The decisions by both the Respondents were illegal and ultra vires on the part of the 1st Respondent and unfair or procedurally improper on the part of the 2nd Respondent.
18. The judicial review application is found to have merits and it is hereby allowed.



Findings and Determination

19. For the forgoing reasons this court makes the following findings and determinations;
- a. An order of certiorari be and is hereby issued quashing the decision of 3/05/2024 by the 1st and 2nd Respondents of unilaterally and unprocedurally shutting down the Applicant's business;
 - b. An order of injunction be and is hereby issued restraining the 1st and 2nd Respondents whether by themselves, servants, agents or whosoever otherwise from arresting, harassing or intimidating the applicant when legitimately operating her business;
 - c. An order of prohibition be and is hereby issued prohibiting the 1st and 2nd Respondents from closing the Applicant's business for the year 2024; and if payment has been made for the year 2025 an Order of prohibition be and is hereby issued prohibiting the 1st and 2nd respondents from closing the Applicant's business for the year 2025 pending the outcome on the decision for renewal of Applicant's Licence.
 - d. And order of prohibition be and is hereby issued prohibiting the County Commander, Kiambu County, OCPD Kikuyu Police Station and other police officers within the same jurisdiction from arresting, harassing or intimidating the Applicant while legitimately operating the business;
 - e. Costs awarded to the Applicant

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 7TH DAY OF MARCH, 2025.

A.MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

For the Ex-Parte Applicant

N/A – 1st and 2nd Respondent

