



**Thumbi t/a Drope Zone Bar & Restaurant v Permanent Secretary, Ministry of Interior & National Administration & 6 others; County Government of Taita Taveta (Interested Party) (Petition E015 of 2024) [2025] KEHC 7979 (KLR) (9 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7979 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
PETITION E015 OF 2024**

**AN ONGERI, J  
JUNE 9, 2025  
JUDGMENT**

**IN THE MATTER OF ALLEGED THREAT OF CONTRAVENTION  
OF ARTICLES 2 AND 10 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED THREAT OF CONTRAVENTION OF ARTICLES  
19, 20, 21, 22, 24, 40, 43 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**EDWARD THUITA THUMBI T/A DROPE ZONE BAR &  
RESTAURANT ..... PETITIONER**

**AND**

**THE PERMANENT SECRETARY, MINISTRY OF INTERIOR & NATIONAL  
ADMINISTRATION ..... 1<sup>ST</sup> RESPONDENT**

**THE OFFICER COMMANDING TAVETA POLICE STATION .... 2<sup>ND</sup>  
RESPONDENT**

**TAVETA SUB-COUNTY POLICE COMMANDER ..... 3<sup>RD</sup> RESPONDENT**

**TAITA TAVETA SUB-COUNTY DEPUTY COMMISSIONER 4<sup>TH</sup> RESPONDENT**

**TAITA TAVETA COUNTY COMMISSIONER ..... 5<sup>TH</sup> RESPONDENT**

**TAITA TAVETA COUNTY POLICE COMMANDER ..... 6<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... INTERESTED PARTY**



## JUDGMENT

1. The Petitioner herein Edward Thuita Thumbi T/a Drope Zone Bar & Restaurant filed this Petition against the 7 Respondents stated above seeking the following orders:-
  - i. A declaration that the impugned directive by the 1<sup>st</sup> Respondent dated 12<sup>th</sup> November 2024 for arbitrary closure of the Petitioner's Bar and Restaurant within Taita Taveta Area be declared unconstitutional null and void.
  - ii. A declaration that the actions of the Respondents are in violation of Articles 2, 10, 24, 40, 43 and 47 of *the Constitution* of Kenya.
  - iii. An order for Judicial review order of certiorari quashing the decision made by the 1st Respondent to close the Petitioner's Bar and Restaurant.
  - iv. Any other orders, writs and directions the Honorable Court considers appropriate and just to grant for purposes of the Petitioner's constitutional rights.
  - v. Cost of this Petition.
2. The Petitioner averred as follows in the Petition:-
  - i. That the Petitioner herein is Edward Thuita Thumbi who is a resident within Taita Taveta County.
  - ii. That the 1<sup>st</sup> Respondent on the 12<sup>th</sup> November 2024 issued a directive to the 2<sup>nd</sup> to 6<sup>th</sup> Respondents to proceed and close bars and alcoholic drinks falling within 300 metres of basic education institutions.
  - iii. That the 1<sup>st</sup> Respondent mapped out the Petitioner's business as one of the affected businesses that should be closed forthwith.
  - iv. That the Petitioner's business does not fall within the 300 Meters as alleged but approximately 700 metres from a basic education institution.
  - v. That the intended closure of the Petitioner's business is purely actuated by malice as the Petitioner initiated the business idea sometimes in February 2024 and concluded making payments for inspection and License by May 2024 when there was already a directive subsisting by the then Cabinet Secretary Ministry of Interior and National Administration.
  - vi. That the purported illegal closure of Petitioner's Bars and Restaurant by the 1<sup>st</sup> Respondent will significantly disrupt the livelihoods of the Petitioner he solely depends on the said business for survival.
  - vii. That further to the foregoing, the Petitioner will be thrown into a state of destitution as he will be unable to meet his daily needs.
  - viii. That the manner in which the decision to close the Petitioner business was arrived at was further in contravention of the national values and principles of governance which include human dignity, social justice, human rights, good governance transparency and accountability as underscored in Article 10 of *the Constitution* of Kenya, 2010.



- ix. That Respondents have failed to act and operate within the Constitution which is the Supreme Law of the Land in unlawfully by forcefully closing the Petitioner's business premises within Taita Taveta and failed to give reasons for doing so.
  - x. That the actions and decision by the 1<sup>st</sup> Respondent are illegal, irrational and unconstitutional as the Petitioner stand to suffer irreparable damage and prejudice.
  - xi. That the Petitioner is constrained to apply for certiorari, and declaratory orders, that the aforesaid conducts and/or actions of the Respondents are illegal and unconstitutional.
3. The Petitioner stated the legal basis as follows:-
- i. Whereas the Petitioners have constitutional obligations to respect, uphold and defend the Constitution and a guaranteed right to institute court proceedings to claim that the Constitution has been contravened.
  - ii. And whereas the Constitution of Kenya 2010 provides for the rights and freedoms to be enjoyed by all citizens in the Republic of Kenya.
  - iii. And whereas the institutions represented as the Respondents are creations of the Constitution of Kenya, 2010.
  - iv. And whereas the aforesaid Constitution of Kenya 2010 provides for the powers, responsibilities and obligations of the aforesaid institutions.
  - v. And whereas the Petitioners Constitutional values as provided for and protected by Article 10(2)(a) and (b) of the Constitution of Kenya 2010 – in particular the right to participate in all national and county matters, human dignity, equity, social justice, inclusiveness, non-discrimination, integrity, transparency and accountability.
  - vi. And whereas the Petitioner has constitutional rights under Article 40 the constitution provides for the right to own property either individually or in association with others and does not permit the arbitrary deprivation of person's property or interest in or over any property.
  - vii. And whereas the Petitioner's constitutional values to economic and social rights as provided for by Article 43.
  - viii. And whereas the Constitution of Kenya 2010 provides for non-limitation of rights and fundamental freedoms provided for in the bill of rights.
  - ix. And whereas the Petitioners have Constitutional Rights under Article 47 the Constitution provides for a reason to be given for any decision making.
4. The Petitioner claimed the following violations:-
- i. The decision by the Respondent to close Petitioner's bar is unconstitutional contrary to Article 47 of the Constitution to the extent that the Petitioners were not given the reason why the Respondent's reached at that decision.
  - ii. By the Respondents closing down the Petitioner's business being Bar and Restaurant within Taita Taveta area they are in contravention with Article 43 of the Constitution which advocates for economic rights.
  - iii. By the Respondents deciding the issue on themselves they violated Article 10 of the Constitution which Advocates for National Values and Principles of Governance as the same



was not complied with as there was no social justice, good governance and accountability on the part of the Respondents.

- iv. By sitting and making the decision by themselves without giving reasons for their decision the Respondents have violated Petitioners right to Fair Administrative Action contrary to Article 47 of *the Constitution*.
  - v. By the intended closure of the Petitioner's business violates the provision of Article 40 to own property and deprivation of interest and interest in or right over any property.
5. The petition was canvassed by written submissions.
6. The Respondent only filed a replying affidavit sworn by the 2<sup>nd</sup> Respondent's Officer Commanding Taveta Police Station MITSANZE THOYA on 18<sup>th</sup> March 2025 as follows:-
- i. That I am the Officer Commanding Station Taveta Police Station, I am conversant with the matters set out in the application and the Petition and in that capacity duly authorized and competent to swear this affidavit in response to the application and the Petition.
  - ii. That the directive by the 1<sup>st</sup> Respondent dated 12<sup>th</sup> November 2024 was forwarded to our station through the 4<sup>th</sup> Respondent on 26<sup>th</sup> November 2024.
  - iii. That the implementation of the directive, as clearly indicated therein requires coordination and collaboration with both the Ministry of Education and more specifically NACADA as the agency charged with enforcing Section 3(c) of the National Campaign against Alcohol and Drug Abuse Act.
  - iv. That in line with the directive to liaise with the relevant agencies to ensure compliance with Section 12(1)(c) of the *Alcoholic Drinks Control Act* that requires that alcoholic drinks outlets be at least 300metres from any learning institution, our station, within which the Petitioner Applicant is located, has not yet received any communication from NACADA or the Ministry of Education in order to implement the directive as against the Petitioner.
  - v. That as it stands currently, the Petitioner Applicant is still operational.
  - vi. That implementation of said Section 12(1)(c) of the *Alcoholic Drinks Control Act* requires the services of a surveyor in order to determine the distance between the Petitioner Applicant and any learning institution. There has to date not been any engagement with a surveyor on our part in order to determine the distance between the Petitioner Applicant and a learning institution for implementation purposes.
  - vii. That the assertion by the Petitioner Applicant that the directive was made without giving reasons is untrue as the directive itself which has been produced by the Petitioner indicates that the reason for closure of the listed outlets is due to breach of Section 12(1)(c) of the *Alcoholic Drinks Control Act*.
  - viii. That I am informed by State Counsel on record, which information I believe to be true that the Respondents have a constitutional mandate to implement the law and this Honorable Court can only interfere with such mandate where there is proven malice. The Petitioner has not proven any malice against the Respondents but only insists that it is not within the 300 metre mark and that no reasons were given for its inclusion in the list of outlets to be closed. This Honourable Court should thus allow the due process of the law to continue such that if the professionals engaged determine that indeed the Petitioner has not violated 12(1)(c) of the *Alcoholic Drinks Control Act*, then the Petitioner will not be closed down. As it stands,



the Petition and application are premature and an abuse of the court process as there are no constitutional rights of the Petitioner that have been or are under threat of being violated nor has the Petitioner been approached or harassed as a result of the directive by the 1<sup>st</sup> Respondent.

- ix. That I am informed by State Counsel on record, which information I believe to be true that in spite of the directive issued by the 1<sup>st</sup> Respondent, the *Alcoholic Drinks Control Act* has procedures on how to handle any grievances arising and offences under it are prosecuted as per the law. That it would thus be unfair for this Honourable Court to issue the orders as prayed by the Petitioner without there being an investigation as to whether there is breach of Section 12(1)(c) or not. Further, the agency in charge of implementation, NACADA, is not before this Honourable Court to be able to inform on the facts to enable this Honourable Court make a just determination. The facts before this court are that there is in existence a directive by the 1<sup>st</sup> Respondent which has not been implemented nor has there been any action against the Petitioner to warrant the orders sought.
  - x. That what I have hereinabove stated is true and correct to the best of my knowledge, information and belief save for information sources whereof I have disclosed.
7. The Petitioner filed written submissions as follows:-
  8. That the petitioner seeks several declarations and orders from the court, arguing that the 1st Respondent's directive dated 12th November 2024, which ordered the closure of bars within 300 meters of basic education institutions, was unconstitutional, arbitrary, and violated multiple provisions of *the Constitution* of Kenya.
  9. The petitioner contends that the directive was issued without public participation, lacked procedural fairness, and unjustly deprived him of his right to property under Article 40.
  10. Additionally, the petitioner argues that the directive contravened his economic and social rights under Article 43 and his right to fair administrative action under Article 47, as he was neither heard nor given reasons for the closure.
  11. The petitioner further asserts that the respondents' actions were irrational, illegal, and procedurally improper, as they failed to adhere to constitutional principles such as transparency, accountability, and human dignity under Article 10.
  12. That the closure of his business—allegedly 700 meters away from any learning institution—was based on malice rather than facts, causing him financial loss and hardship.
  13. Citing precedents such as *Keroche Breweries Limited v Attorney General and Municipal Council of Mombasa v Republic*, the petitioner argues that judicial review is warranted to quash the directive, as it was made without jurisdiction, fairness, or reasonableness.
  14. On costs, the petitioner relies on Section 27(1) of the *Civil Procedure Act* and case law (*Republic v Rosemary Wairimu*) to argue that costs should follow the event, compensating the successful party for litigation expenses.
  15. In conclusion, the petitioner urges the court to grant the sought reliefs, including a declaration of unconstitutionality, an order of certiorari quashing the directive, and costs, as the respondents' actions were unlawful, unreasonable, and procedurally unfair.
  16. Further, the petitioner submitted that the petition is grounded in constitutional safeguards and judicial precedents supporting the protection of fundamental rights against arbitrary state action.



17. The Respondents did not file any submissions in this case.
18. The issues for determination in this Petition are as follows:-
  - i. Whether the impugned directives dated 12<sup>th</sup> November 2024 by the 1<sup>st</sup> Respondent should be declared unconstitutional.
  - ii. Whether the Respondent's actions are in violation of Articles 2, 10, 24, 40, 43 and 47 of *the Constitution* of Kenya.
  - iii. Whether this court should issue an order of juridical review quashing the decision dated 12<sup>th</sup> November 2024.
  - iv. Who pays the costs of the Petition?
19. The Petitioner stated in his supporting affidavit that his business was closed despite the fact that the directive states that bars within 300 metres away from any basic learning institution should be closed.
20. He said his business is approximately 700 metres away from basic learning institution but it was mapped out as one of the affected businesses that had to close forthwith.
21. That the said closure has caused irreparable damage to the Petitioner and his family and the same is in complete contravention of national values and principles of governance.
22. I have carefully considered the Petition, the supporting affidavit, the replying affidavit by the 2nd Respondent's Officer Commanding Taveta Police Station, and the written submissions filed by the Petitioner, this Court makes the following determination:
23. The Petitioner, Edward Thuita Thumbi, proprietor of Drope Zone Bar & Restaurant, has challenged the directive issued by the 1st Respondent on 12th November 2024, which ordered the closure of bars and restaurants within 300 meters of basic education institutions.
24. The Petitioner contends that his establishment is approximately 700 meters away from any such institution and that the directive was issued without due process, violating his constitutional rights under Articles 2, 10, 24, 40, 43, and 47 of *the Constitution* of Kenya. He seeks declaratory orders, certiorari to quash the decision, and costs.
25. The Respondents, through the replying affidavit, argue that the directive has not yet been implemented against the Petitioner, as the necessary steps—including liaising with NACADA and engaging a surveyor to verify distances—have not been completed.
26. They assert that the Petition is premature, as no action has been taken against the Petitioner, and that the due process under the *Alcoholic Drinks Control Act* should be allowed to run its course.
27. On the Constitutionality of the Directive, the Petitioner's claim hinges on the alleged arbitrariness and unconstitutionality of the directive.
28. Article 47 of *the Constitution* guarantees the right to fair administrative action, which includes the right to be given reasons for any decision affecting one's rights.
29. The directive, as produced by the Petitioner, cites Section 12(1)(c) of the *Alcoholic Drinks Control Act* as the basis for closure, which requires bars to be at least 300 meters from learning institutions.
30. While the Respondents argue that reasons were provided in the directive itself, the Petitioner's assertion that his business is outside the 300-meter radius raises questions about the rationality and fairness of its inclusion in the list of affected establishments.



31. The Court finds persuasive the holding in *Keroche Breweries Limited v Attorney General* [2012] eKLR, where it was emphasized that state actions must adhere to constitutional standards of fairness, rationality, and proportionality.
32. The directive, if implemented without verifying the Petitioner's compliance with the 300-meter requirement, would amount to arbitrary deprivation of property under Article 40 and a violation of fair administrative action under Article 47.
33. On Violation of Constitutional Rights, the Petitioner's right to property under Article 40 is implicated, as the closure of his business without justification would constitute an arbitrary deprivation.
34. Further, that his economic and social rights under Article 43 are at stake, as the business is his primary source of livelihood. The Respondents' failure to demonstrate that due process was followed in mapping and listing the Petitioner's establishment undermines the principles of transparency and accountability under Article 10.
35. The case of *Municipal Council of Mombasa v Republic* [2002] eKLR underscores that administrative decisions must be procedurally fair and substantively justifiable.
36. Here, the Respondents have not shown that the Petitioner was afforded an opportunity to contest his inclusion in the list or that a survey was conducted to verify the distance.
37. This lack of procedural fairness renders the directive susceptible to judicial review.
38. On the Remedy of Certiorari, the Petitioner seeks certiorari to quash the directive. Judicial review orders are discretionary and are granted where a decision is illegal, irrational, or procedurally improper (*Republic v Public Procurement Administrative Review Board & Another* [2018] eKLR).
39. Given the Petitioner's uncontroverted assertion that his business is 700 meters from a learning institution—a fact the Respondents have not disproved—the directive, insofar as it affects him, is irrational and unreasonable.
40. Certiorari is therefore warranted to quash the decision as it pertains to the Petitioner.
41. Costs follow the event under Section 27(1) of the *Civil Procedure Act*. However, there is no evidence that the Petitioner's business has been closed and for that reason, I direct that each party bears its own costs of the petition.
42. A declaration be and is hereby issued that the directive dated 12th November 2024 by the 1st Respondent, insofar as it orders the closure of the Petitioner's business, Drope Zone Bar & Restaurant, is unconstitutional for violating Articles 40, 43, and 47 of *the Constitution*.
43. An order of certiorari is granted quashing the directive dated 12<sup>th</sup> November 2024 as it relates to the Petitioner's business.

**DATED, SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF JUNE 2025 IN OPEN COURT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent

