



Kenya Chambers of Commerce and Industry v Cabinet Secretary, Ministry of Interior & Coordination of National Government & 2 others (Constitutional Petition E003 of 2024) [2025] KEHC 11133 (KLR) (22 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CONSTITUTIONAL PETITION E003 OF 2024**

RC RUTTO, J

JULY 22, 2025

BETWEEN

KENYA CHAMBERS OF COMMERCE AND INDUSTRY PETITIONER

AND

**THE CABINET SECRETARY, MINISTRY OF INTERIOR & COORDINATION
OF NATIONAL GOVERNMENT 1ST RESPONDENT**

THE OFFICE OF THE ATTORNEY GENERAL 2ND RESPONDENT

THE COUNTY GOVERNMENT OF MACHAKOS 3RD RESPONDENT

JUDGMENT

1. The 1st Petitioner is a registered society whose members are traders and business men and women operating as retailers of liquor and related products and restaurants within Machakos County. The 1st respondent is sued over a directive issued on 6th March 2024 that ordered the forcible closure, cancelation and confiscation of alcohol from business premises of operators in the liquor industry. The 2nd Respondent is the Attorney General, the principal legal advisor to the national government established under Article 156 of *the Constitution*. The 3rd Respondent is the county licensing authority responsible for issuing alcoholic beverage licences.
2. In its petition filed on 28th March 2024, the petitioner cites constitutional violations under Articles 1(3)(a), 2(1), 3(1), 10(1), 23(1) & (3), 27, 32, 36, 40(1)(a) & (b), 40(3)(b), 50, 149, 160(1), 165, 258(1) and 259(1)(b). The Petition is supported by an affidavit sworn by Danson Matheka Kitunga, the Chairperson of the petitioner.
3. The petitioners allege that a verbal directive was issued by the 1st Respondent to close down all bars in Machakos County and across Kenya, without any prior notice to the bar owners. The directive was described as arbitrary, unfair, and unreasonable, unproportionate particularly because the traders had



valid licences issued over the years without objection. They contend that they had applied for renewal of the licences for the year 2024 and paid all the requisite renewal-charges without any objection by the respondent and issued with licences to operate.

4. Following the issuance of the directive on 6th March 2024, the 1st respondent, together with the County Commissioner Machakos and the OCS Machakos conducted raids on various bars in Machakos. The result was the confiscation of alcohol, revocation of licences, and forceful closure of premises. These actions, according to the petitioner, violated Article 47 of *the Constitution*, which guarantees fair administrative action.
5. The petitioner argues that the respondents could not validly cancel licence or refuse to grant an application for renewal of licences on the strength of a blanket decision affecting all operators. That licence cancellations must be done on a case-by-case basis, not through a blanket directive. The petitioner also complained that the traders were not notified of any objection to their respective applications and no objection was heard before the purported cancellation of their license. That a decision was not rendered in writing and therefore breached its rights under Article 40 and 47 of *the Constitution*. For those reasons, the petitioner prayed for the following reliefs stated verbatim:
 - a. A declaration that the directive issued by the Cabinet Secretary, Ministry of Interior & Coordination of National Government on 6th March 2024 for closure of all bars in Kenya and Machakos County without giving notice and according fair hearing to the petitioner is ultra vires and contrary to Articles 27, 28, 29, 32, 40, 43, 47, 50 and 56 of *the Constitution*;
 - b. A declaration that any forceful confiscation of the petitioner's alcohol, licences and closure of their business premises is illegal, oppressive and violates the rights of the petitioners;
 - c. A declaration that the petitioners are entitled to the full protection from discrimination and the same right had been violated hence they are entitled to full compensation for loss suffered during and after the illegal raid / confiscation of their alcohol and licences and forcible closure of their business premises;
 - d. An order restraining any further illegal raid/ confiscation of their alcohol and licences and forcible closure of their business premises by the respondent against the petitioners;
 - e. Costs of the petition.
6. The 1st and 2nd Respondents opposed the petition by filing undated grounds of opposition and a reply to the petition dated 16th September 2024. They stated that the petition is bad in law, incompetent and misconceived. They denied ever issuing a verbal directive to close down the petitioners' establishments. They averred that the directives dated 6th March 2024 regarding eradication of illicit brew, drugs and substance abuse were backed by laws which have not been challenged and only affected licenced bars and other outlets which excluded the applicants who had not been licenced. They deponed that it was not clear if the retailers had ever been issued with the licences in the previous years since only once such licence had been filed. They observed that only two directives, that is numbers 6 and 7, affected retailers. A cursory perusal of those directives, they added, did not indicate that bars in Kenya and Machakos County, including those of the petitioner, ought to be closed.
7. Despite the petitioners' claims, the respondents maintained that the directive was lawful, and that relevant authorities were properly mandated to enforce it. It justified that the office of the County Commissioner and the OCS, are members of the Liquor Licensing Committee and in collaboration with other members, visited bars and other establishments in line with sections 8 and 14 of the *Alcoholic Drinks Control Act* and in alignment with the directive.



8. From their observation of the documents adduced by the petitioner, it was observed that only one of its members was in receipt of a licence to operate for the year 2023. So that as at 6th March 2024, majority of the businessmen and women had failed to take out the requisite licences and were therefore in apparent breach of legislation.
9. After visiting the premises, a report was tabled recommending the closure of establishments that had not complied with the law. The respondents contended that this recommendation formed the basis of the current petition. They also highlighted that many of the traders were operating under conservatory court orders, yet their businesses were still non-compliant with legal requirements.
10. The 1st and 2nd Respondents prayed that the petition be dismissed with costs, advancing the following reasons; the directive issued on 6th March 2024 was lawful, a majority of the petitioner's members were not licensed to operate in the relevant year, as they failed to produce documents proving otherwise, there was no evidence that the business proprietors were guarantors or legally affiliated with the petitioner, the deponent lacked authority to swear the supporting affidavit, rendering the petition defective, the petitioner lacked the legal capacity to sue, no constitutional rights had been infringed, and the petitioner was not entitled to compensation or any of the reliefs sought.
11. When the petition came up for hearing on 3rd April 2025, Mr. Mathoka learned counsel for the petitioner, informed the court that the petitioner would rely solely on the averments contained in the petition and urged the court to allow it. Accordingly, there is no need to revisit the contents of the petition, as they have already been summarized.
12. On the part of the 1st and 2nd respondents, Mr. Kuria, learned counsel holding brief for Mr. Lungu, informed the court that they would rely entirely on their written submissions dated 3rd April 2025 and prayed that the petition be dismissed.
13. I have reviewed and considered the petition, the supporting affidavit and annexures, the replying affidavit with its annexures, as well as the submissions filed. The petitioner alleges a violation of its rights under Article 47 of *the Constitution*, arguing that the directive issued on 6th March 2024 was enforced without prior written notice to its members. On its face, the petitioner has identified the constitutional provision allegedly breached and explained the basis of the claim. As such, the petition raises a legitimate constitutional question, consistent with the principles established in the landmark case of Anarita Karimi Njeru v. Republic [1979] KECA 12 (KLR). I now turn to assess whether the petition is merited.
14. At the outset, the 1st and 2nd respondents argued that the petition is legally defective for failing to disclose whether the petitioner is a director of the petitioner. However, Article 22(1) of *the Constitution* clearly provides that any person may initiate legal proceedings alleging a violation of a right or fundamental freedom. Additionally, Article 22(2)(b) affirms that a person may bring such proceedings on behalf of a group or class of persons.. From my understanding, the respondents do not challenge the legal personality of the petitioner but rather the deponent of the supporting affidavit on behalf of the petitioner. Accordingly, the petitioner fits the criteria of a person within Article 22 to institute such proceedings. Therefore, the respondents' objection lacks merit and must be dismissed.
15. The respondents further argued that the deponent lacked capacity to sue, citing the absence of an authority document attached to the petition. The petitioner states that the applicants on whose behalf he filed the petition endorsed a consent. However, no evidence to the contrary has been presented to contradict the petitioner's assertion. In the absence of any such proof, it would be improper for the court to accept the respondents' claim and conclude that the petitioner lacked authority to sue or to depose on behalf of the company. In this regard, I am persuaded by the decision of this court



in *Ngugi & another v. County Sand Conservation and Utilization Authority* [2023] KEHC 24162 (KLR), which held:

“In my view, since courts are not in a position to run the internal affairs of a company, it is proper to hold that prima facie directors or employees are authorized to sue on behalf of a company, unless there is a contest to their capacity and authority to bring the suit from any of the directors or the shareholders. Courts cannot act on an allegation by a stranger or outsider to the company to conclude that there was no authority or capacity to bring that suit by such officials.”

16. The core of this dispute centres on the petitioner’s argument that the directive of 6th March 2024 violated Article 47 of *the Constitution*, which guarantees the right to fair administrative action. Specifically, the petitioner claims it was not given prior written notice before its members’ businesses were affected. Additionally, the petitioner alleges a breach of Article 40, arguing that their property rights were infringed when their establishments were forcibly shut down and their licences revoked.
17. This complaint is rooted in the directive issued on 6th March 2024, in which the President of the Republic of Kenya classified the abuse of illicit alcohol, narcotic drugs, and psychotropic substances as one of the five major threats to national security. In response, the government adopted a firm security-based strategy to tackle the issue and introduced several measures. The parts of the directive relevant to the petitioner’s members are as follows:
 6. Any licences currently issued to bar and other outlets and premises by County Governments that are contrary to the provisions of the *Alcoholic Drinks Control Act*, especially as relates to licencing of premises within residential areas and around basic educational institutions are null and void. County Security Teams are to secure shut down and seizure of such premises with immediate effect.
 7. No bars or alcoholic outlets shall be allowed to operate beyond the stipulated operation hours as provided in section 34 of the *Alcoholic Drinks Control Act*, failure to which the operator shall be fined or imprisoned as provided by law and all the drinks, and related accessories in the premises forfeited with accompanying licence withdrawal.”
18. In line with the aforementioned directives, a Sub-County Inspection Report was issued on 28th March 2024. Upon review, it is evident that the directive aimed to implement mitigation measures against the spread of illicit alcohol. I find no unlawfulness in the directive, particularly because establishments operating outside the bounds of the *Alcoholic Drinks Control Act* were subject to legal consequences. Compliance with statutory provisions is a legal obligation, not a courtesy, such information is, or ought to be, within the knowledge of all business operators. They are expected to remain informed of relevant laws and adhere to them at all times.
19. The petition failed to substantiate its allegations. Although it claimed that a verbal directive had been issued, no evidence was presented to support this claim. Likewise, there was no proof that alcohol was confiscated or licences revoked. Even assuming inspections were carried out, the petitioners did not establish how any constitutional or statutory violations were committed by the enforcement officers. The evidence instead suggests the officers were simply fulfilling their lawful duties.
20. I further agree with the respondents that no credible evidence was provided to show that all members of the petitioner society had obtained valid licences to operate in 2024. In the absence of such proof, it is



reasonable to infer that some members were operating unlawfully and in breach of the *Alcoholic Drinks Control Act*. As licencing is granted on a case-to-case basis, it was incumbent upon each of the affected parties to not only lay out the licence issued and the terms thereon, but proceed to demonstrate that the party had not only complied with the terms but also that the ensuing enforcement was contrary to the stipulated terms. A blanket allegation in this scenario would not suffice.

21. The petition did not present sufficient grounds to justify the issuance of the reliefs sought. Consequently, I find that the petition lacks merit and hereby dismiss it. However, considering the public interest issues raised in the pleadings, each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 22ND DAY OF JULY, 2025.

RHODA RUTTO

JUDGE

In The Presence Of;

.....Petitioner

.....Respondent

Selina Court Assistant

