



Republic v Murang’a County Government & 2 others; Gakure & 2 others (Exparte Applicants) (Judicial Review E004 of 2024) [2025] KEHC 9566 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG’A
JUDICIAL REVIEW E004 OF 2024**

TW OUYA, J

JULY 3, 2025

BETWEEN

REPUBLIC APPLICANT

AND

MURANG’A COUNTY GOVERNMENT 1ST RESPONDENT

KANGEMA SUB COUNTY ALCOHOLIC DRINKS REGULATION

COMMITTEE 2ND RESPONDENT

KAHURO SUB COUNTY ALCOHOLIC DRINKS REGULATION

COMMITTEE 3RD RESPONDENT

AND

MARGARET GITUTO GAKURE EXPARTE APPLICANT

LILIAN MUTHONI MWANGI EXPARTE APPLICANT

PETER NDUATI RUTHI EXPARTE APPLICANT

RULING

1. The Applicants herein filed a substantive motion dated 2nd July 2024 seeking the following orders THAT:
 - a. An order of certiorari to quash the decision of the respondents to deny the applicants liquor trading licenses to sell alcoholic drinks for the year 2024;
 - b. An order of mandamus to compel the respondents to issue the applicants with liquor trading licenses to sell alcoholic drinks for the year 2024.



2. The application is based on grounds on the face thereof as well as the statement of facts and the affidavit of verification of facts sworn by Peter Nduati Ruthi. It is averred that the ex parte Applicants have been operating the bar business in Kangema and Kahuro towns with approval of the Respondents within Kangema and Kahuro Sub Counties within Murang'a County for close to 20 years.
3. In January 2024, the 1st respondent published a notice requesting all members of the public who would like to apply for licenses to sell liquor to do so by 31 March 2024. Following the invitation, the ex parte applicants applied for the licenses to sell liquor for the year 2024 and paid the requisite application fee.
4. Public health officers also inspected their premises and they agreed and approved that the premises were fit to run the liquor business. Sometime in May 2024, the 1st Respondent made a subsequent publication extending the deadline for payment for liquor licences to 7th June 2024.
5. Upon checking the status of the renewal licenses in the Murang'a County E Service portal, they were utterly shocked and dismayed to learn that their bars' application for a liquor license had been rejected/disapproved without any valid reason. Moreover, the status of a bar owned by the 2nd Ex parte applicant was recorded as unknown. The ex parte applicants wrote to the Respondents requesting for valid reasons for rejection/disapproval of their liquor license but the same did not elicit any response.
6. This was done irrespective of the fact that they had satisfied all the conditions set by the Respondents and their bar premises were inspected and confirmed to be fit. That they were not informed of any objections lodged against their applications and they were not called upon to defend themselves against any objection.
7. The Respondents opposed the Application vide the Affidavit of Benard Wanyoike Kariuki sworn on 26th September 2024. The Respondents contend that the 2nd and 3rd Respondents communicated to the ex parte applicants on their refusal to renew the licenses of the Applicants via the Respondents' website.
8. They further averred that prior to the notification by the Respondents, all Applicants for the renewal of their licenses within Murang'a county had their premises inspected by the officers of the Committee in their respective sub-counties, the public health and physical planning office.
9. Upon conducting the inspections, the officers of the 2nd and 3rd Respondents, public health and physical planning officers, sent the inspection remarks to all the applicants. The inspection report required applicants who had not complied with the requirements of the *Public Health Act* and the *Physical and Land Use Planning Act* to immediately comply with the report. Licenses were thereafter renewed for all premises that had complied with the report and refused to renew the Applications of those who had not complied with the report, including the ex parte applicants.
10. I have considered the Notice of Motion, the statutory statement and all affidavit evidence for and against the Motion. I am quick to add that despite the subject licensing period having lapsed, these proceedings are still alive since should the rights of the Applicants be found to have been breached, damages would be an available remedy. Two issues arise for determination:
 - a. Whether the Applicants are in breach of the doctrine of exhaustion.
 - b. Whether the applicants have established the legal threshold for the grant of orders of judicial review.



11. Section 9(2) of the Fair Administrative Actions Act provides that: -

The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under the Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

Also relevant is sub-section (3) which provides that "the High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in sub-section (2) have been exhausted, direct that an applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

12. The law is largely settled on this legal principle. *Matavo J* (as he then was) in *Republic v Commissioner of Domestic Taxes Ex Parte Fleur Investments Limited* [2020] eKLR stated:

"The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks Judicial Review of that action without pursuing available remedies before the agency itself. The court must decide whether to review the agency's action or to remit the case to the agency, permitting Judicial Review only when all available administrative proceedings fail to produce a satisfactory resolution. This doctrine has assumed esteemed juridical lineage in Kenya, a position upheld by the Court of Appeal in *Speaker of National Assembly vs Karume* which held that- "*Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.*"

13. Several post-2010 court decisions have added justification and rationale for the doctrine under the 2010 Constitution among them *Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others* in which the Court of Appeal provided the constitutional rationale and basis for the doctrine as follows:

"It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts...This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution."

14. An analysis of the jurisprudence on the doctrine shows that at least two principles emerge. First, courts must undertake an extensive analysis of the facts, the regulatory scheme involved, the nature of the interests involved, including the level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. Two, the High Court may, in exceptional circumstances, find that the exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it.

15. In the instant application, it is the Applicants' case that they tendered applications for alcoholic licences for their bars for the year 2024 by March 2024 as required by the Respondents. They assert they were not called for a hearing and that it is only upon checking the Respondents' E Services portal that



they realised that their application had been rejected without any notice or further reference to them. It is their case that they were not informed of any objections lodged against their applications and no hearings were conducted. They add that the Respondents did not render written reasons for the rejection of their applications.

16. In the assumption that the facts as stated present the obtaining situation to the Applicants cases thus leaving them aggrieved, the question that readily springs to mind is what was their legal remedy?
17. Under section 17(1) of the Murang'a County *Alcoholic Drinks Control Act* 2022, an aggrieved party has the opportunity to apply for a review of the decision of the Sub-County decision to the Committee. Thus, there exists a mechanism for review and within the meaning of Section 9(2) of the Fair Administrative Actions Act, the Applicants were bound to exhaust this remedy before resorting to court.
18. The Applicants have not demonstrated in any way that they attempted to appeal the Respondents' decision. Instead, they simply wrote letters dated 24th March 2024 and marked as annexure 'E1', demanding reasons why their licenses were not renewed. The burden was on the Applicants to prove that they indeed filed the appeals and that the 2nd Respondent declined to hear them, thus putting themselves within the exception in Section 9(4) of the Fair Administrative Actions Act.
19. Moreover, if the Applicants were dissatisfied by the Respondents' refusal to grant them information on why their application was rejected, the doctrine of exhaustion would have required them to first seek redress under Section 4 of the *Access to Information Act* from the Commission on Administrative Justice.
20. Having failed to do so, the Applicants have fallen afoul of the doctrine of exhaustion. The judicial review application before the court offends the said doctrine which divests the court of the jurisdiction to adjudicate over the matter. The resultant effect is that the Notice of Motion herein is improperly before the court. As this finding disposes the application, I find no need to delve into issue no (b) above.
21. Essentially, the Notice of Motion application dated 2nd July 2024 is hereby dismissed. In the circumstances of this case, I direct that each party bears its own costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 3RD JULY, 2025.

HON. T. W. OUYA

JUDGE

