



**Shwashwa & another (Voi Liquor Business Owners Community Based Organisation
Suing through its officials) v Voi Sub-County Police Commander & 5 others;
County Government of Taita-Taveta (Interested Party) (Constitutional
Petition E002 of 2024) [2025] KEHC 9468 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9468 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CONSTITUTIONAL PETITION E002 OF 2024**

AN ONGERI, J

JULY 3, 2025

**IN THE MATTER OF: ARTICLES 2, 3, 10, 20, 21,
22, 23, 24, 27, 47 & 165 OF THE CONSTITUTION**

AND

**IN THE MATTER OF: RULE 10(1) AND 23 OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

CAROLINE SHWASHWA 1ST PETITIONER

CHRISTOPHER MWAWASI 2ND PETITIONER

**VOI LIQUOR BUSINESS OWNERS COMMUNITY BASED ORGANISATION
SUING THROUGH ITS OFFICIALS**

AND

VOI SUB-COUNTY POLICE COMMANDER 1ST RESPONDENT

VOI SUB-COUNTY DEPUTY COUNTY COMMISSIONER .. 2ND RESPONDENT

OFFICER COMMANDING VOI POLICE STATION 3RD RESPONDENT

TAITA-TAVETA COUNTY COMMISSIONER 4TH RESPONDENT

TAITA-TAVETA COUNTY POLICE COMMANDER 5TH RESPONDENT

THE HON ATTORNEY GENERAL 6TH RESPONDENT

AND

THE COUNTY GOVERNMENT OF TAITA-TAVETA INTERESTED PARTY



JUDGMENT

1. The Petitioners herein filed Petition dated 21st March 2024 seeking the following reliefs:-
 - i. A declaration that directives by the Cabinet Secretary, Ministry of Interior & Coordination of National Government given on the 6th March 2024 for the closure of all bars within the residential areas and further directive by the Deputy President on the 19th March 2024 that all bars in Kenya operate from 5pm to 11p.m be declared unconstitutional and null and void.
 - ii. A declaration that unless the licenses by the Petitioners are revoked in the manner provided by the Taita-Taveta County Alcoholic Drinks Control and Licensing Act, 2016 the decision by the Respondents to close down the Petitioner's businesses are illegal, null and void.
 - iii. A declaration that the actions of the Respondents to close the Petitioners businesses without following due process violates the Petitioners right as guaranteed in Article 27, 40, 43 and 47 of the Constitution.
 - iv. An order restraining the Respondents either by themselves or by their officers from enforcing the impugned directives by the Cabinet Secretary, Ministry of Interior & Coordination of National Government given on the 6th March 2024 for the closure of all bars within the residential areas and further directive by the Deputy President on the 19th March 2024 that all bars in Kenya operate from 5p.m to 11p.m.
 - v. An order restraining the Respondents from closing or interfering with the smooth operation of bars and entertainment joints with valid licenses or permits from the Interested Party.
 - vi. The Respondents be directed to bear the costs of this Petition jointly and severally.
 - vii. This Honourable Court be pleased to grant such further order or orders as may be just and appropriate in the circumstances of the Petition.
2. The Petition was filed simultaneously with an application of even date seeking conservatory orders, which application was allowed by the court on 31st July 2024.
3. The application and the Petition were supported by the affidavit of the 1st Petitioner in which she deponed as follows:-
 - i. On 6th March 2024 the Cabinet Secretary, the Ministry of Interior and National Coordination (hereinafter "the Cabinet Secretary") issued a directive to all the County Police Commanders and County Commissioners for closure of all bars and entertainment places within residential areas. I produce a copy of the newspaper article and mark it Exhibit 2 for the kind perusal and consideration of this honourable court.
 - ii. On 19th March 2024 the Deputy President issued another directive that all bars in Kenya shall open at 5p.m and close at 11p.m. I produce a copy of the newspaper article and mark it Exhibit 3 for the kind perusal and consideration of this honourable court.
 - iii. The aforesaid directives by the Cabinet Secretary and the Deputy President are not supported by any law and have since been stayed by this court sitting in Kisumu on 19th March 2024. I produce a copy of the newspaper article and mark it Exhibit 4 for the kind perusal and consideration of this honourable court.



- iv. The Petitioners and all members of the Voi Liquor Business Owners Community based organization hereinafter “the Petitioners CBQ”) are licensed bar owners under the provisions of Section 8 and 9 of the Taita Taveta County *Alcoholic Drinks Control Act*, 2016 (hereinafter “the County Alcoholic Act”). I produce a copy of the County Alcoholic Act and mark it Exhibit 5 for the kind perusal and consideration of this honourable court.
- v. The Petitioners licenses and those of the members of the Petitioners CBO were issued after a rigorous application process which included inspection of the premises by the County Alcoholic Drinks Control and Liquor Licensing Board (hereinafter “the Board”) and the Sub County Alcoholic Drinks Control and Liquor Licensing Committee (hereinafter “the Committee”) where the Respondents and members. I produce copies of the licenses and mark them Exhibit 6 for the kind perusal and consideration of this Honourable Court.
- vi. The licenses issued were and still are very express as to the approved venue and time of operations of the bars depending on whether the establishment is a wine and spirit, member’s club, night club e.t.c. The closing time according to the 3rd Schedule of the County Alcoholic Act range from as early as 8:30p.m to 3:00a.m depending on the type of the establishment. I produce a copy of the 3rd Schedule of the County Alcoholic Act and mark it Exhibit 7 for the kind perusal and consideration of this Honourable court.
- vii. The Respondents having sat in the Board and the Committee respectively and issued the Petitioners with licenses after a rigorous vetting process cannot on the basis of the illegal directives by the Cabinet Secretary and the Deputy President proceed to unilaterally revoke the Petitioners licenses and close their business establishments.
- viii. In addition to the foregoing the purported directives by the Cabinet Secretary which the Respondents is enforcing against the Petitioners were stayed by this Court at Kisumu which facts are within the knowledge of the Respondents.
- ix. Acting on the aforesaid illegal and impugned directives, the Respondents have been conducting a massive operation of arresting the Petitioners CBO members and closing their operations in a manner contrary to the County Alcoholic Act and *the Constitution*.
- x. In view of the activities aforesaid, the Petitioners are apprehensive that unless the Respondents are restrained in the manner sought in this application, the Petitioners businesses will suffer irreparably.
- xi. The Interested Party which is mandated by the County Alcoholic Act and *the Constitution* to issue licenses and permits to businesses including entertainment establishments, have issued a presser confirming that the actions of the Respondents of the Governor’s Presser and mark it Exhibit 8 for the kind perusal and consideration of this Honourable Court.
- xii. The actions of the Respondents aforesaid enforcing an illegal directive is as will be demonstrated hereunder in detail, illegal and goes against values and principles of governance as provided under Article 10 of *the Constitution* and further violates the Petitioner’s right to equal protection of the law and right to a fair administrative as guaranteed by article 27 and 47 of *the Constitution*.
- xiii. Article 10 of *the Constitution* provides for the national values and principles of governance including good governance, integrity, transparency and accountability.



- xiv. The actions of the Respondents to enforce against the Petitioners a directive that has already been suspended and a directive which is illegally anyway, violates the national values and principles of governance as entrenched in article 10 of *the Constitution*.
 - xv. Article 27(1) and (2) of *the Constitution* provides that every person is equal before the law and has the right to equal protection and equal benefit of the law and that equality includes the full and equal enjoyment of all rights and fundamental freedoms.
 - xvi. As indicated above, the Petitioners were issued with licenses by the very Respondents. Having been issued with the licenses a legitimate expectation accrued that the Petitioners will be protected by the law to operate their businesses peacefully until their licenses are revoked or expired in the manner provided by the Act.
 - xvii. As indicated above, the Petitioners licenses have not been revoked and have not expired. The action of the Respondents therefore are illegal, null and void for violating article 27 of *the Constitution*.
 - xviii. Article 47(1) of *the Constitution* provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - xix. The actions of the Respondents closing the Petitioners business without first revoking their licenses in the manner provided by the law violates the Petitioners right to a fair administrative actions as guaranteed under Article 47 of *the Constitution*.
 - xx. As already demonstrated above, the Respondents acting on an illegal directive, have closed down the Petitioners businesses on grounds that there are orders from above to close all bars and night clubs.
 - xxi. The illegal actions of the Respondents aforesaid have caused and continue causing irreparable business losses to the Petitioners and unless the Honourable Court intervenes by issuing the Orders sought herein the Respondents are likely to violate and continue violating the Petitioners fundamental rights and freedom as highlighted above and the Petition herein will be rendered nugatory.
4. The Respondent opposed the Petition by filing a Replying Affidavit sworn by Sadiq William, the Police Commander of Taita Taveta as follows:-
- i. That, I am the County Police Commander Taita Taveta County, competent to swear this affidavit on my behalf and that of the Respondent, as the 1st and 3rd Respondents fall under my office. In my capacity aforesaid, I am duly authorized to make this affidavit on their behalf.
 - ii. That, I have read and understood the Notice of Motion dated 21st March, 2024 and the affidavit in support sworn by Caroline Shwashwa which I wish to respond in the ensuing paragraphs.
 - iii. That on 11th March, 2024 there was a joint County Security Intelligence Committee security meeting with all the four Sub - county Security Intelligence Committee Taita Taveta County, when it became clear that bars and other alcoholic drinks premises and outlets were operating without 2024 valid licences in the entire county and that the process of licensing namely inspection of premises was due to commence on 11th March, 2024



- iv. That notices were issued informing the general public and business persons involved of the commencement of the inspection and payment of inspection fees. A copy of the notices is attached marked SW-1.(a) & (b).
- v. That on the material day, the Governor, Taita Taveta Hon. Mwadime had requested audience with County Commissioner and County Police Commander at the County Commissioners office in the afternoon after a security meeting. When the Governor was informed by County Commissioner that alcoholic premises as aforesaid were operating without valid licenses, he was equally shocked and promised to look into it to find out who was responsible for the laxity as the county was being denied revenue.
- vi. That on 12th March, 2024 Taveta, Taita and Mwatate sub-counties commenced alcoholic premises inspections for favour of vetting the same before licensing.
- vii. That In response to paragraphs 7, 8, 9 and 10, the respondents aver that the Voi Sub-County Liquor Licensing Committee commenced inspection on premises that submitted applications for licensing on 22nd March, 2024 to 3rd April, 2024 vide the Voi Sub-County Inspection Report.
- viii. That before and during the commencement of the inspections, no licenses had been issued by the liquor licensing committee of Voi sub-county. This fact is supported by Minutes Number 3/27/03/2024 (ii) and (iii) for the consultative meeting between the County Liquor Board and County Bar Owners Association held at the County Commissioners Boardroom at Mwatate on 27th March, 2024.
- ix. The respondents aver that no licenses for the year 2024 had been issued to the applicants, This fact is confirmed by the committee chairman, secretary and the SCPC Voi who is a member; Mr. Peter Kimoju, Mr. Kennedy Mjomba and Mr. Dafala Ibrahim respectively, in their handwritten statements.
- x. That on the 16th March, 2024, the County Commissioner and County Police Commander Taita Taveta, accompanied by sub-county security team visited many Voi Township alcoholic drinks selling premises to monitor the National Government directives on crackdown on illicit brews, Narcotic Drugs and non-compliance bars and related premises. This is when the security team discovered with shock that some premises possessed documents purported to be liquor licenses for the year 2024 and yet no licensing procedures had commenced in the entire Voi Sub-County as aforesaid above. The premises were: i) Rosewood Hotel (Licence No. 2024/17367, ii) Comfort Guest House (Licence No. 2024/17330), iii) Teita Investment Ltd (Licence No. 2024/17284), iv) Opp Homeboys Hotel (Licence No. 2024/15452), v) Petca Enterprises (Licence No. 2024/17332), vi) Teita Investment Ltd (Licence No. 2024/17287), vii) Quench Valley Liquor Shop (Licence No. 2024/17393), viii) Ribs & Beer Garden (Licence No. 2024/11773), ix) Gems Lounge (Licence No. 2024/17408), x) Plusone Dalton Investment (Licence No. 2024/15707), xi) Shalex Bar & RESTUARENT (Licence No. 2024/17288), xii) Fine Breeze Village (Licence No. 2024/17338) and xiii) The Dungeon Cool (Licence No. 2024/17316).
- xi. The respondents aver that many of those premises/persons listed in the document; authority to swear and annexures did not have any authority to operate without licences whatsoever. This is because the petitioners have misled the honourable court into believing that all had been issued with licences that were purportedly taken away by the respondents. The fact is that 13 documents purported to be legal licences were collected from the above listed premises for the



purpose of investigation to establish the person who unlawfully and illegally issued such invalid documents. The County Criminal Investigating Officer inquiry file No. 2/2024 compiled by County Criminal Investigating Officer Taita Taveta concerning the same is before ODPP, Voi, and pending direction.

- xii. That the directives given by the National Government through the Deputy President and the Cabinet Secretary of Interior as cited in the petition has not acted in a manner that amount to unconstitutional. This is because the Petitioners/Applicants were operating without valid 2024 liquor licenses contrary to Alcoholic Drinks Act which was domesticated/adopted from the aforesaid national statute.
 - xiii. That further, the directive by National Government was on crackdown on illicit brews, Narcotic Drugs and non-compliance bars and related premises, the inspection was done and those who had complied their premises were approved while others were given recommendations to adhere to before approval, other premises were closed down due to non-compliance with public health regulations as seen from the inspection report.
 - xiv. That under section 51 of the Police Service Act provided as follows:

“51 (1) The force shall be employed in Kenya for the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders, detect offenders and bring them to justice and the enforcement of all laws and regulations with which it is charged,” and that the exercise carried out was to safeguard the interests of the general public and ensure that all laws as required have been complied with by the petitioners.
 - xv. That I am advised by counsel on record that the Petitioners/applicants have not demonstrated to this court how their constitutional rights and fundamental freedoms have been infringed/breached by the respondents and have not met the threshold for the court’s intervention as highlighted in *Anarita Karimi Njeru v Republic* [1979] 1 KLR 154.
 - xvi. That I am further advised by counsel on record that the petitioners have not met the threshold for granting of conservatory orders by this honorable court and we pray that the orders issued on 25th March, 2024 be vacated and the application be dismissed.
5. The parties filed written submissions as follows;
 6. The Petitioners submitted that they are challenging the directives issued by the Cabinet Secretary for the Ministry of Interior and the Deputy President, which ordered the closure of bars in residential areas and restricted their operating hours from 5 PM to 11 PM.
 7. They argued that these directives were issued without legal authority, procedural fairness, or public participation, violating their constitutional rights under Articles 27 (equality), 40 (property rights), 43 (economic and social rights), and 47 (fair administrative action).
 8. The Petitioners, licensed bar owners under the Taita-Taveta County *Alcoholic Drinks Control Act*, 2016, contended that the directives unlawfully override county government powers, which are constitutionally mandated to regulate liquor licensing under the Fourth Schedule.
 9. They asserted that the Cabinet Secretary and Deputy President acted beyond their authority, infringing on devolved functions and violating the principle of legality under Article 10 of *the Constitution*.



10. Additionally, the Petitioners argued that the directives were implemented without prior notice, hearing, or justification, contravening the *Fair Administrative Action Act*, which requires procedural fairness, including the right to be heard and written reasons for adverse decisions.
11. That the abrupt closure of bars also unlawfully restricted their economic rights under Article 43, depriving them of their livelihoods without due process.
12. Citing judicial precedents, the Petitioners emphasized that constitutional interpretation must be purposive and holistic, ensuring that no provision undermines another.
13. They are seeking declaratory and injunctive reliefs to nullify the directives, protect their rights, and uphold constitutional governance.
14. They also ask for costs of the petition arguing that the Respondents' unconstitutional actions warrant judicial censure to deter future violations.
15. In conclusion, the Petitioners urged the Court to declare the directives unconstitutional, illegal, and void, and to grant the reliefs sought to safeguard their rights and the rule of law.
16. The Respondents opposed the petition and argued that the closure of the Petitioners' businesses was lawful and justified under the Taita Taveta County Alcoholic Drinks Control and Licensing Act, 2016.
17. They contended that the Petitioners were operating without valid licenses, as the purported licenses they presented were issued during an ongoing inspection period, rendering them null and void.
18. The Respondents emphasized that their actions were not based on the suspended directives from the Cabinet Secretary or Deputy President but were instead a lawful enforcement of county licensing regulations.
19. They rejected the Petitioners' claims of constitutional violations, asserting that the closure was a reasonable limitation of rights under Article 24 of *the Constitution*, aimed at upholding public order and safety.
20. The Respondents further argued that the Petitioners' rights to equality, fair administrative action, and due process were not infringed, as the businesses closed were non-compliant with legal requirements.
21. They urged the court to dismiss the Petition, denying all reliefs sought by the Petitioners, and to award costs to the Respondents, maintaining that their actions were justified and in line with their statutory duties.
22. The issues arise for determination in this petition are as follows;
 - i. Whether the directives issued by the Cabinet Secretary for Interior and the Deputy President, ordering the closure of bars in residential areas and restricting operating hours, are unconstitutional.
 - ii. Whether the Respondents acted lawfully in enforcing the closure of the Petitioners' businesses without following due process under the Taita-Taveta County Alcoholic Drinks Control and Licensing Act, 2016.
 - iii. Whether the Petitioners are entitled to the declaratory and injunctive reliefs sought.
 - iv. Who should bear the costs of this Petition?



23. The Petitioners challenged the directives issued by the Cabinet Secretary for Interior and the Deputy President, arguing that they violate constitutional principles, including devolution, legality, and fundamental rights.
24. Under Article 10 of *the Constitution*, state officers must adhere to principles of good governance, including the rule of law and public participation.
25. The directives in question were issued without any legal framework or public consultation, rendering them arbitrary.
26. The High Court in *Law Society of Kenya v Attorney General & Another* [2020] eKLR emphasized that executive directives must conform to existing laws and cannot override statutory provisions.
27. Further, Article 186 and the Fourth Schedule of *the Constitution* assign liquor licensing to county governments.
28. The Taita-Taveta County Alcoholic Drinks Control and Licensing Act, 2016, governs the regulation of bars in the county.
29. The national government's directives, which purport to override county laws, violate the principle of devolution as established in *County Government of Nyeri v Cabinet Secretary for Devolution & Others* [2015] eKLR, where the court held that national government cannot usurp county functions without a constitutional or statutory basis.
30. The directives also infringe on the Petitioners' rights under;
 - i. Article 27 (equality and non-discrimination): The selective enforcement of the directives without a clear legal basis creates unequal treatment.
 - ii. Article 40 (property rights): The forced closure of businesses without due process amounts to an unjust deprivation of property.
 - iii. Article 43 (economic rights): The Petitioners' livelihoods were disrupted without justification.
 - iv. Article 47 (fair administrative action): The directives were implemented without notice, hearing, or written reasons, contrary to the *Fair Administrative Action Act*, 2015.
31. In *Republic v Kenya Revenue Authority Ex-Parte Aberdare Freight Services Ltd* [2004] eKLR, the court held that administrative actions must be procedurally fair, reasonable, and lawful. The directives fail this test.
32. The Respondents argued that they acted within the law by closing bars allegedly operating without valid licenses.
33. However, the evidence shows that the Petitioners possessed licenses issued under the Taita-Taveta County *Alcoholic Drinks Control Act*, 2016.
34. The Respondents did not follow the proper revocation procedure under the Act before closing the businesses.
35. In *Pastoli v Kabale District Local Government Council & Others* [2008] 2 EA 300, the court held that public authorities must strictly comply with statutory procedures when taking action against businesses.
36. The Respondents' failure to adhere to due process renders their actions illegal and procedurally unfair.



37. In *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR, the court emphasized that where constitutional rights are infringed, courts must grant appropriate remedies.
38. The Petitioners are entitled to the following remedies;
- i. A declaration be and hereby issued that the directives are unconstitutional and void.
 - ii. An order of prohibition be and is hereby issued restraining the Respondents from enforcing the directives.
 - iii. An injunction be and is hereby issued preventing further interference with their businesses.
39. Each party to bear its own costs of this petition.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF JULY 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....for Petitioners/Applicants

.....for Respondents

.....for Interested Party

