



**Two Cousins Distillers Limited v Cabinet Secretary, Ministry of Interior and
Coordination of National Government & another (Constitutional Petition E434 of 2024)
[2025] KEHC 12508 (KLR) (Constitutional and Human Rights) (14 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12508 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

CONSTITUTIONAL PETITION E434 OF 2024

AB MWAMUYE, J

AUGUST 14, 2025

**IN THE MATTER OF ARTICLES 2,3,10,19,20,21,23,24,43,47,50,159,165,258 AN
259 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 47 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF RULES 23 AND 24 OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND
PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF VIOLATION OF THE RIGHT TO FAIR ADMINISTRATIVE
ACTION**

AND

**IN THE MATTER OF SECTIONS 4,5,6 AND 7 OF THE FAIR ADMINISTRATIVE
ACTIONS ACT**

AND

**IN THE MATTER OF SECTIONS 7,8,9,10,25 AND 26 OF THE ALCOHOLIC DRINKS
CONTROL ACT, 2010**

AND

IN THE MATTER OF THE STANDARDS ACT



BETWEEN
TWO COUSINS DISTILLERS LIMITED PETITIONER
AND
CABINET SECRETARY, MINISTRY OF INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

Introduction and Background

1. This Petition arises from the suspension of the Petitioner’s licenses to manufacture alcoholic beverages by the 1st Respondent through a letter dated 5th August 2024. The Petitioner, a duly licensed manufacturer, challenges the suspension as unlawful, procedurally unfair, and in violation of its constitutional rights under Article 47 (fair administrative action) and statutory protections under the Fair Administrative Actions Act, *Alcoholic Drinks Control Act*, and other relevant laws.
2. The Petitioner operates under multiple regulatory frameworks, including licenses from the Kenya Revenue Authority (KRA), Kenya Bureau of Standards (KEBS), and NACADA. It underwent a vetting process in March 2024 following an earlier suspension, complied with all requirements, and was cleared to resume operations in 21st June 2024. The subsequent suspension in August 2024, without prior notice or hearing, precipitated this litigation
3. The Petitioner thus sought the following reliefs from this Honourable Court:
 - i. A declaration be and is hereby issued that the directive and order by the 1st Respondent contained in its letter dated 5th August 2024 addressed to the Petitioner suspending all its licenses and certification permits was without legal authority, a usurpation of statutory power granted to the mandated regulatory bodies and undertaken without regard to the laid down procedures as provided for under Sections 17 and 26 and of the *Alcoholic Drinks Control Act*, Section 10A of the *Standards Act* and Section 20 of the *Excise Duty Act* and therefore failed the procedural fairness constitutional muster and as such contravened Articles 10, and 47 of the *Constitution* and is therefore null and void.
 - ii. A declaration be and is hereby issued that the directive and/or order by the 1st Respondent contained in its letter dated 5th August 2024 addressed to the Petitioner suspending all licenses and certification permits is irrational, unreasonable, procedurally unfair and is issued ultravires in violation of the provisions of Sections 4, 5 and 6 of the Fair Administrative Actions Act and therefore contravenes Article 47 of the *Constitution* and is as such unconstitutional, null and void.
 - iii. An order of judicial review for an order of certiorari be and is hereby issued bringing into this Court and quashing the directive by the 1st Respondent contained in its letter dated 5th August 2024 addressed to the Petitioner suspending all its licenses and certification permits issued by the mandated government agencies.



- iv. An order of judicial review for and of prohibition be and is hereby granted prohibiting the 1st Respondent, whether by itself, its agents, proxies and servants, acting for and on its behalf whether jointly or severally from interfering or impeding the lawful manufacture, sale and distribution of the Petitioner's products within the Republic of Kenya or in any manner whatsoever or further interfering with the Petitioner's enjoyment of its fundamental rights as guaranteed by the Constitution.
- v. An order for compensation
- vi. Costs of the Petition

Petitioner's Case

4. The Petitioner avers it is duly licensed by the appropriate regulatory and county agencies, that all such licences and certifications were valid as at 5th August 2024, and that suspension could only lawfully occur under the Alcoholic Drinks Control Act, the Standards Act, the Excise Duty Act and county liquor legislation following due process. It is averred that after the March 2024 campaign and initial suspension, it submitted to a comprehensive, multi-agency vetting led by the 1st Respondent, was found compliant on re-inspection, and was expressly cleared on 21st June 2024, leading to material financial and commercial commitments including acquisition of excise stamps.
5. It contends the 1st Respondent's August 5th letter was an unlawful usurpation of powers statutorily vested in specific regulators, offended Article 47 and the FAAA by omitting prior notice, hearing and written reasons, and ignored the Petitioner's existing and valid licences and earlier clearance. It is further argued that the directive was irrational and unreasonable, considered irrelevant matters, ignored relevant ones, and violated the Petitioner's legitimate expectation arising from the June clearance after costly compliance.

Respondents' Case

6. In response to the Petition and Notice of Motion Application, the Respondents filed Grounds of Opposition dated 4th October, 2024. The Respondents deny any violation of rights, arguing that the Petitioner bears the legal and evidentiary burden which it has not discharged. They frame the directive within a national imperative to combat illicit brews and substance abuse, invoking Section 4(2)(k) of the Preservation of Public Security Act as enabling control of trading and manufacture, and the Respondents argue that the action was lawful and proportionate.
7. They further averred that the Petitioner failed to seek written reasons or exhaust alternative administrative remedies under Sections 4(2) and 9 of the FAAA, and that the Petition lacks the precision demanded by *Anarita Karimi Njeru v R (1976-1980) KLR 1272*. They further assert that judicial intervention in this matter would offend the doctrine of separation of powers, as the decision was an exercise of executive prerogative under Articles 153(2) and 153(4) (a) (b) of the Constitution and thus urged the court to dismiss the Application with costs.
8. The Petition was canvassed by way of written submissions and only the Petitioner complied by filing its respective submissions.

Petitioner's Submissions

9. The Petitioner, in its written submissions identified three issues for determination: whether the Petition was merited, whether the 1st Respondent acted beyond its powers, and who should bear the costs of the Petition.



10. On the merits, the Petitioner asserted that the Petition had been filed in good faith to address violations of its constitutional rights. It was contended that the Petitioner held all requisite licences and approvals for its operations, including a valid liquor licence from the County Government of Machakos under both county and national laws, standardization marks from the Kenya Bureau of Standards, and a licence from the Kenya Revenue Authority to manufacture excisable goods. The Petitioner further held approval from NACADA to manufacture, sell, and distribute alcoholic drinks, and was under regulation by various statutory bodies including the Directorate of Occupational Safety and Health Services, the Anti-Counterfeit Authority, the Public Health Department, NEMA, and the Department of Weights and Measures. All these authorizations were valid as at the date of the impugned notice.
11. The Petitioner submitted that the 1st Respondent's suspension of its licences, permits, and clearances was ultra vires, arbitrary, and in breach of laid-down legal procedures. It was argued that the Cabinet Secretary purported to exercise powers not yet vested in that office since the relevant regulations had not been debated or approved by the National Assembly under the *Statutory Instruments Act*. The directive was faulted for providing for an immediate blanket suspension of all licences without regard to those already valid or to the principle of continuity of business under section 14 of the *Alcoholic Drinks Control Act*. It was the Petitioner's contention that the move was politically motivated and unlawful, warranting quashing by this Court.
12. The Petitioner further alleged violations of Articles 27 and 47 of the *Constitution*, claiming that the Respondents acted in a discriminatory, unfair, and procedurally improper manner. The actions were said to have denied the Petitioner the equal protection of the law and the right to lawful, reasonable, and procedurally fair administrative action. The Respondents allegedly acted on suspicion and conjecture, shutting down a legitimate business that had complied with all licensing requirements and contributed significantly to the national economy. The Petitioner invoked the doctrine of legitimate expectation, relying on *Keroche Industries Limited vs Kenya Revenue Authority & 5 others* [2014] eKLR, to assert that licences could not be withdrawn without prior notice, rational justification, and an opportunity to be heard.
13. On costs, the Petitioner relied on established principles that costs follow the event and should ordinarily be awarded to the successful party unless there are good reasons to depart from that rule. The Court was urged to exercise its discretion judicially and award costs in the Petitioner's favour. The Petitioner reiterated that it had legally acquired all its licences, complied with all regulatory requirements, and conducted lawful operations while paying taxes. It was submitted that the unlawful suspension of its licences had caused severe financial distress, and sufficient evidence had been adduced to justify the Court granting the reliefs sought, including costs.

Issues for Determination

14. Having considered the pleadings, submissions, and authorities relied on, the issues for determination are:
 - i. Whether the impugned suspension violated Article 47 of the *Constitution* and the FAAA.
 - ii. Whether the 1st Respondent acted beyond its powers.

Analysis and Determination

i. Whether the impugned suspension violated Article 47 of the *Constitution* and the FAAA.

15. Article 47 of the *Constitution* on fair administrative action provides:



1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
 2. Suppose a person's right or fundamental freedom has been or is likely to be adversely affected by administrative action. In that case, the person has the right to be given written reasons for the action.
16. Pursuant to Article 47(3), Parliament has enacted the *Fair Administrative Action Act*. Under Section 2 of the said Act, "administrative action" is expressed to include:
- “The powers, functions, and duties exercised by authorities or quasi- judicial tribunals or
- (ii) any act, omission, or decision of any person, body, or authority that affects the legal rights or interests of any person to whom such action relates.
17. Furthermore, Sections 4(1), (2) and (3) thereof provides:
- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
 - (2) Every person has the right to be given written reasons for any administrative action against him.
 - (3) Where an administrative action is likely to affect the rights or fundamental freedoms of any person adversely, the administrator shall give the person affected by the decision-
 - a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to section 6;
 - e. notice of the right to legal representation, where applicable; f. notice of the right to cross-examine or where applicable; or g. information, materials, and evidence to be relied upon in making decisions or taking administrative action.
18. Article 47 guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; Article 47(2) grants a concomitant right to written reasons where an administrative action is likely to adversely affect rights. Sections 4(3)–(6) of the FAAA concretise these guarantees by requiring prior and adequate notice of the nature and reasons for the proposed action, opportunity to be heard, notice of the right to internal review or appeal, and written reasons for any adverse decision.
8. The fact that the right to Fair Administrative Action is a constitutional right was stated by the Constitutional Court of South Africa in the case of *President of the Republic of South Africa and Others v South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1*, that;
- “ Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common



law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...”

19. The importance of this right to fair administrative action as a constitutional right in our Article 47 cannot be over emphasized. The Court of Appeal stated in the case of *Judicial Service Commission v Mbalu Mutava & another* [2014] eKLR; that;

“ Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”

20. And in the case of *Dry Associates Ltd v Capital Markets Authority and Another* [2012] eKLR the Court observed;

“ Article 47 is intended to subject administrative processes to constitutional discipline hence relief for administrative grievances is no longer left to the realm of common law or judicial review under the *Law Reform Act* (Cap 26 of the Laws of Kenya) but is to be measured against the standards established by the *Constitution*.”

21. In this matter, the 1st Respondent’s letter of 5th August 2024 re-suspended “all manufacturers of potable alcoholic drinks,” two months after the Petitioner’s factory had been found compliant and expressly cleared to resume production, and after KRA had lifted the excise suspension. The Respondents do not suggest that, between 21st June and 5th August 2024, any specific non-compliance peculiar to the Petitioner emerged, nor did they give the Petitioner prior notice of an intention to revisit the clearance, particulars of any alleged breach, or an opportunity to be heard on any concrete concern. This constitutes a clear violation of both Article 47 of the *Constitution* and the mandatory provisions of the FAAA. The importance of these procedural safeguards was emphasized in *Keroche Industries Limited v Kenya Revenue Authority & 5 others* (Miscellaneous Civil Application 743 of 2006) [2007] KEHC 3680 (KLR), where the court stressed that procedural fairness is not a mere technicality but a fundamental pillar of administrative justice, and that decisions made in violation of these safeguards are not just irregular but fundamentally null and void.

22. The 1st Respondent’s approach offends the minimum content of procedural fairness. The duty to act fairly is not discharged by referencing a national policy objective; it is fulfilled by engaging the affected licensee with notice, allegations, timelines, an opportunity to respond, and written reasons. The law requires more than post-hoc rationalization as the affected party must be told in advance the case it has to meet and be afforded a fair chance to answer it.



23. The Respondents invoked Section 4(2)(k) of the *Preservation of Public Security Act* to justify a broad control of manufacture and trading, arguing that the suspension was necessary to combat the proliferation of illicit alcohol. However, this argument fails to appreciate that even emergency measures must comply with constitutional due process requirements. Even where the State invokes public interest or security concerns, it must still adhere to procedural fairness, as emergency measures do not grant a license to disregard constitutional safeguards. Public interest must be properly balanced against individual rights and that blanket suspensions without due process are inherently arbitrary.
24. The anti-illicit alcohol programme cannot be pursued by general edicts that displace the tailored procedures under valid laws, county and sector regulators must still act under their enabling statutes, issue notices, conduct inspections, and make individualised decisions with reasons.
25. The Petitioner had just completed a rigorous, multi-agency vetting led by the 1st Respondent, complied with ten corrective items, been re-inspected and cleared, and had its KRA excise licence restored. A second, undifferentiated suspension, unaccompanied by particulars or reasons, jars against the administrator's own recent conduct and assessment. It disregards relevant considerations, the Petitioner's verified compliance and reliance interests, and rests on irrelevant ones, a generalised campaign objective untethered to the Petitioner's circumstances, thereby failing the standard of rational connection between means and purpose that Article 47 demands.
26. It is no answer that the Petitioner did not first demand reasons. Article 47(2) places a positive duty on the administrator to give written reasons where adverse action is likely to affect an individual; the right is not contingent upon a prior demand. Kenyan courts have consistently rejected attempts to invert this duty. Administrators must themselves communicate rational grounds for any adverse decision and afford an opportunity to be heard before it takes effect.
27. The Respondents additional argument that the Petition is premature because the Petitioner failed to exhaust remedies under Section 4(4) of the FAAA is equally flawed for several reasons. First, the duty to provide reasons for an adverse administrative decision is automatic under Section 4(3)(c) of the FAAA and does not require the affected party to first make a formal request. This interpretation is supported by *Pastoli v. Kabale District Local Government* [2008] 2 EA 300, where the Court of Justice held that where a decision affects rights, the burden is on the authority to justify its action, not on the individual to extract reasons. Second, judicial review remains available even where alternative remedies exist when the administrative action is patently unlawful. Third, the doctrine of legitimate expectation, as articulated in *Kuria Greens Limited v Registrar of Titles & another* [2011] KEHC 4290 (KLR), applies strongly in this case, having fully complied with earlier vetting and received clearance in June 2024, the Petitioner had a legitimate expectation that its licenses would not be arbitrarily revoked without justification.
28. The Court also weighs the public interest in combating illicit alcohol. That interest is undeniable, and is indeed recognised by statute. But the *Constitution* does not permit the State to fight illegality with illegality. Blanket suspensions that ignore process rights risk sweeping up compliant, licensed entities, like the Petitioner, thereby undermining both the rule of law and effective enforcement. In *Olkalou Sub-County Liquor Traders Association v Ministry of Interior & National Administration & 3 others (Constitutional Petition E002 of 2024)* [2024] KEHC 5791 (KLR), the Court observed that enforcement against illicit alcohol must be conducted within the law, respecting individual rights and statutory structures.
29. The unreasonableness of the Respondents' action is further underscored by the complete absence of any evidence suggesting that the Petitioner, a fully compliant licensee, posed any threat to public health or security. This makes the suspension not just procedurally flawed but substantively



unreasonable under the Wednesbury principles established in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 (CA). The suspension letter's failure to identify any specific non-compliance or risk attributable to the Petitioner's operations renders the decision irrational and disproportionate.

30. Accordingly, and given the provisions of fair administrative action, the Petitioner was entitled to prior and adequate notice of the suspension of its licences due to the ministerial directive and under the *Alcoholic Drinks Control Act*. Suspending its licence without according written reasons or giving the Petitioner an opportunity to be heard was unfair mainly because the Respondents had not found that it had not complied with prior directives. The tenets of due process demand that fair administrative action prerequisite be adhered to before any adverse administrative action is taken against any person.
31. Accordingly, the 1st Respondent's suspension of the Petitioner's licenses was procedurally unfair for lacking notice, hearing and reasons, substantively unreasonable for being unsupported by any evidence of non-compliance, and constitutionally impermissible as a violation of Article 47 and the FAAA. The Respondents' reliance on public security concerns is unsubstantiated in relation to this particular Petitioner, making the suspension ultra vires, irrational, and unlawful.

ii. Whether the 1st Respondent acted beyond its powers.

32. The second critical issue before this Court is whether the 1st Respondent, in suspending the Petitioner's licenses, unlawfully usurped the statutory powers vested in specialized regulatory bodies, thereby acting ultra vires his authority.
33. The legal framework governing the manufacture and sale of alcoholic beverages in Kenya is carefully delineated across multiple statutes, each assigning specific oversight roles to distinct agencies. The *Alcoholic Drinks Control Act*, 2010 vests licensing authority in county governments and the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA), which are empowered to regulate, inspect, and where necessary, suspend or revoke licenses upon satisfaction of specified conditions. Similarly, the *Standards Act* grants the Kenya Bureau of Standards (KEBS) exclusive authority to certify and decertify products based on compliance with health and safety standards. The *Excise Duty Act* further delegates licensing and monitoring of excisable goods, including alcoholic beverages, to the Kenya Revenue Authority (KRA). These statutory frameworks create a clear division of responsibilities, ensuring that regulatory decisions are made by bodies with the requisite technical expertise.
34. the *Constitution* allocates functional competencies between the national and county levels. Control of trading in alcoholic drinks and licensing is principally a county function to be exercised under the *Alcoholic Drinks Control Act* and county liquor legislation. The Control of trading in alcoholic drinks is vested in counties and must be exercised within the statutory regime, not by central directives that collapse those procedures.
35. In the present case, the 1st Respondent, through the impugned letter of 5th August 2024, purported to suspend the Petitioner's licenses across all these regulatory domains without any demonstrated involvement or recommendation from the respective agencies. This unilateral action constitutes a clear encroachment on the statutory mandates of KEBS, NACADA, and the KRA.
36. The August 5th directive also purported to impose sector-wide, immediate suspensions without demonstrating a statutory warrant in the 1st Respondent to revoke or suspend licences issued under distinct Acts, *Alcoholic Drinks Control Act*, *Standards Act*, *Excise Duty Act* by distinct authorities county committees, KEBS or KRA. Statutory powers are specific: KEBS may suspend standardisation marks under the *Standards Act*; county licensing committees may suspend liquor licences for grounds



and following procedures in the *Alcoholic Drinks Control Act* and county laws; KRA may suspend excise licences under the *Excise Duty Act*. The principle of legality requires the administrator to point to the four corners of enabling law.

37. The Respondents reliance on the *Preservation of Public Security Act* to justify this overreach is legally untenable. While Section 4(2)(k) of the Act permits the regulation of goods production in the interest of public security, it does not authorize the executive to bypass or displace established regulatory frameworks. This interpretation aligns with *Commissioner of Lands v. Kunste Hotel* [1997] eKLR, where the Court of Appeal emphasized that general executive powers cannot be invoked to circumvent specific statutory regimes. The court stated as follows;

“The appellant was exercising his statutory powers under the Government Lands Act, when he decided to allot the subject plot to the interested party. The exercise of that discretion clearly affected the legal rights of Kunste Hotel Ltd. The exercise of that power was therefore judicial in nature and he was therefore obliged to hear all those who were likely to be affected by his decision (see, *Mirugi Kariuki v. A.G.*) Civil Appeal No. 70 of 1991 (unreported).”

38. If public health concerns necessitated stricter enforcement, the proper course would have been for the 1st Respondent to direct the relevant agencies to exercise their statutory powers, not to supplant them entirely. Resort to public security cannot be a bypass around Articles 10 and 47 and the specific procedural codes that Parliament has enacted for each regulatory domain.

39. Moreover, the 1st Respondent’s actions violate the principle of legality, a cornerstone of constitutional governance under Article 10 of the *Constitution*. In *Keroche Breweries Limited & 6 others v Attorney General & 10 others* [2016] eKLR, the Court, on the presidential directive ordering a crackdown on the production and sale of illicit liquor within the country dated 1 July 2015, held that: -

“...However, the fight must be orderly, respect human rights and fundamental freedoms, and be conducted under the law and the *Constitution*. In other words, the appreciation of the need to rid the country of illicit alcohol does not give the Government a free hand to breach the law and the *Constitution*. In carrying out its mandate of protecting Kenyans, the Government must respect the rights of the same Kenyans it is obliged to protect.

Whereas compliance with the dictates of the rule of law may sometimes be frustrating and at times obstructive and inconveniencing to those in authority, that is a sacrifice we must make since, as appreciated in the preamble to the *Constitution*, we recognize the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. As was held by the Court of Appeal in *Judicial Commission of Inquiry Into The Goldenberg Affair & 3 Others vs. Job Kilach Civil Application No. Nai. 77 of 2003* [2003] KLR 249, democracy is usually a messy, often very frustrating, way of governance. In this respect, dictatorships are more efficient. However, as the same Court appreciated in *Dr. Christopher Ndarathi H Murungaru vs. Kenya Anti-Corruption Commission & Another Civil Application No. Nai. 43 of 2006* [2006] 1 KLR 77:...”

40. The Court of Appeal in *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 Others*, Civil Appeal No. 224 of 2017; [2017] eKLR held that: -

“In our view, analysis of the jurisprudence from the Supreme Court leads us to the clear conclusion that Article 10 (2) of the *Constitution* is justiciable and enforceable immediately. To avoid doubt, we find and hold that the values espoused in Article 10 (2) are neither



aspirational nor progressive; they are immediate, enforceable, and justiciable. The values are not directive principles. Kenyans did not promulgate the 2010 Constitution in order to have devolution, good governance, democracy, the rule of law, and participation of the people to be realized progressively sometime in the future; it could never have been the intention of Kenyans to have good governance, transparency, and accountability to be realized and enforced gradually. Likewise, human dignity, equity, social justice, inclusiveness, and non-discrimination values cannot be aspirational and incremental but are justiciable and immediately enforceable. Our view on this matter is reinforced by Article 259(1) (a), which enjoins all persons interpreting the Constitution to promote its values and principles.

Consequently, in this appeal, we make a firm determination that Article 10 (2) of the Constitution is justiciable and enforceable, and violation of the Article can find a cause of action either on its own or in conjunction with other Constitutional Articles or Statutes as appropriate.”

41. Ministerial directives should conform to the Constitution and be carried out in an orderly manner to achieve their purpose in accordance with the national values and principles of governance. Their import and impact should be well thought out and exercised in accordance with respect for the rule of law. They must be targeted at the purpose they are meant to achieve. They should be in writing and directed to specific persons and/or government bodies and/or agencies. The implementation of the directives should be carried out in an orderly manner and exercised in accordance with the provisions of the Constitution.
42. The doctrine of legitimate expectation is implicated by the Petitioner’s clearance on 21st June 2024 after compliance with ten corrective items, followed by KRA’s lifting of the excise suspension, and the Petitioner’s procurement of excise stamps and financing.
43. In the 4th Edition, Vol 1 (1) At page 151, paragraph 81 of the Halsbury’s Laws of England, legitimate expectation is described as follows:

“A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by authority, including an implied representation, or from consistent past practice”.
44. Further according to De Smith Woolf & Jowell, “Judicial Review of Administrative Action” 6th Edn Sweet & Maxwell page 609;

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage.”
45. As can be discerned from these two definitions, legitimate expectation may take many forms. It may take the form of an expectation to succeed in a request placed before the decision maker or it may take the objective form that a party may legitimately expect that, before a decision that may be prejudicial is taken, one shall be afforded a hearing.
46. In Communications Commission of Kenya & 5 others v. Royal Media Services Limited & 5 others, SC Petitions No 14, 14A, 14B and 14C of 2014; [2014] eKLR “CCK case” where Rawal, SCJ discussed the right to fair administrative action as provided for under article 47 of the Constitution by finding: -

“(404) The concept of legitimate expectation has been admirably captured in the main Judgment (paragraphs 256-291) and my intention is to capture its



essence while considering its implication within our constitutional purpose, and the concept of its remedies through the administrative process stipulated under article 47 of the *Constitution*. A state under the rule of law is obliged to balance administrative action and the claims of legitimate expectation as has been claimed by the 1st, 2nd and 3rd respondents in this case. Article 47 in the circumstances is a deliberate step towards the attainment of a fair and dependable government advancing expeditious, efficient, lawful, reasonable and procedurally fair public policies. The doctrine of legitimate expectation requires the entrenchment of a duty to act fairly. A breach of article 47 attracts remedies in Judicial Review especially where an aggrieved person had cause to expect that the attendant aspects of fair administrative action would be adhered to. It is clear that the essence of article 47 is to protect a party's legitimate claim of entitlement that is, procedural solidity and not a mere promise of consideration. As such, the court can quash any decision arrived at un-procedurally or unfairly but reserves itself no right to engage in the administrative duties of the body in question. The court must remain a court." [Emphasis own]

47. In the English case of Council of Civil Service Unions and others v Minister for the Civil Service [1983] UKHL6; [1984] 3 All ER 935, it was held by the House of Lords, inter alia that: -
- “An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving of some benefit or advantage which in the past he had been permitted to continue to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had given the opportunity of making representations against the withdrawal.”
48. In the instant case, the State's own extensive vetting and express clearance communicated a representation that, absent supervening, case-specific non-compliance, the Petitioner could lawfully resume production. The Petitioner, having obtained licenses from the competent authorities after rigorous vetting, had a legitimate expectation that any suspension would follow the statutory processes outlined in the respective Acts. The abrupt and extra-statutory intervention by the 1st Respondent undermined this expectation and created regulatory chaos.
49. The county–national interface does not salvage the August 5th letter directives. The 1st Respondent's directive intruded upon and paralysed county licensing and sectoral statutory schemes without the constitutional or statutory predicates for doing so. The function of control and trading of alcoholic drinks under Schedule 4 Part 2 of the *Constitution* of Kenya lies under the mandate of the county government. In short, the 1st Respondent acted beyond its scope in purporting to suspend, by letter, licences issued under other statutes by other authorities.
50. The Respondents' argument that the suspension was a “policy decision” entitled to judicial deference is equally flawed. While courts exercise restraint in reviewing policy matters, this deference is not absolute. As articulated in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR), executive discretion must still be exercised within legal bounds. Where, as here, the action directly contravenes statutory provisions and encroaches on independent regulatory mandates, judicial intervention is not only appropriate but necessary to uphold the principle of legality.



51. I therefore find that the 1st Respondent's suspension was ultra vires as it unlawfully bypassed the statutory authority of specialized agencies, offended the principle of legality under Article 10 of the Constitution and disrupted the Petitioner's legitimate expectations grounded in prior regulatory compliance.
52. This Court is empowered to fashion a remedy according to Article 23(3) of the Constitution. It is also worth noting that the Constitution calls for 'appropriate reliefs' and lists what these may include. In the context of Article 23(3), appropriate relief is required to protect and enforce the Constitution.
53. Depending on the circumstances of each particular case, the relief may be a declaration of rights, an interdict, a mandamus, or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. However, it does not mention the term 'structural interdicts'.
54. The relief which a court has the power to impose has been addressed by the High Court, which it stated, ...we are, therefore, of the view that Article 23(3) of the Constitution is wide enough and enables us to make appropriate reliefs where there has been an infringement or a threat of infringement of the Bill of Rights.
55. Additionally, Kenyan courts have embraced the reasoning in Minister of Health & Others v Treatment Action & Other see Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002).

“stating; if it is necessary to do so, the Court may even fashion new remedies to secure the protection and enforcement of these all- important rights... the courts have a particular responsibility in this regard and are obliged to 'forge new tools' and shape innovative remedies, if need be, to achieve this goal.”

56. Having considered the issues raised herein, I make a finding that the appropriate orders to be issued are to the effect that;
 - a. A declaration is hereby issued that the directive and order by the 1st Respondent contained in its letter dated 5th August 2024 suspending the Petitioner's licenses and certification permits was without legal authority, a usurpation of statutory powers granted to mandated regulatory bodies, and was undertaken without regard to laid down procedures under the Alcoholic Drinks Control Act, the Standards Act, and the Excise Duty Act and in contravention of Articles 10 and 47 of the Constitution.
 - b. An Order of Certiorari be and is hereby issued bringing into this Court and quashing the 1st Respondent's directive and order contained in the letter dated 5th August 2024 suspending the Petitioner's licences and certification permits.
 - c. An Order of Prohibition be and is hereby issued prohibiting the 1st Respondent, whether by himself, his agents, servants or any person acting under his authority, from further suspending, revoking or interfering with the Petitioner's licenses and permits without following due process as prescribed by law. Nothing in this order precludes any competent regulator from exercising its statutory powers against the Petitioner upon due process.
 - d. Each party shall bear their own costs.

Orders accordingly. File Closed Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF AUGUST 2025.

BAHATI MWAMUYE



JUDGE

In the presence of: -

Counsel for the Petitioner – Mr. Kimani

Counsel for the Respondents – Ms. Wanjiru h/b Mr. weche

Court Assistant – Ms. Lwambia

