



**Karanja v Republic & another (Criminal Revision E533 of 2023)
[2024] KEHC 932 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 932 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E533 OF 2023
CW GITHUA, J
FEBRUARY 6, 2024**

BETWEEN

JOSEPH KARANJA APPLICANT

AND

REPUBLIC 1ST RESPONDENT

EUNICE WANJIKU GICHANGI 2ND RESPONDENT

RULING

1. This is ruling in respect of the notice of motion dated August 4, 2023 in which the applicant sought the following substantive orders;
 - i. That the order revoking the licence to operate Summer Bar and Restaurant made by hon. E. Wambugu, Principal Magistrate on July 24, 2023 be set aside or vacated.
 - ii. That cost of the application to be met by the 1st respondent.
2. The application is anchored on the grounds stated on its face and the depositions made in the supporting affidavit sworn by the applicant, Mr Joseph Karanja Mwangi on August 4, 2023 and annexures thereto.

Briefly, the applicant contends that he operates a bar and restaurant business in the name of Summer Bar and Restaurant in which he sells food and assorted alcoholic drinks in compliance with a license issued by the Murang'a County Government; that on July 24, 2023, the 2nd Respondent who is his employee was charged and convicted in Kandara Criminal Case No E 1110 of 2023 on her own plea of guilty with the offence of breaching the aforesaid licence contrary to section 34 (1) (a) of the *Alcoholic Drinks Control Act* consequent upon which she was sentenced to pay a fine of Kshs 40,000 in default to serve eight (8) months imprisonment.



Further, the applicant averred that in addition to the sentence, the learned trial magistrate revoked the alcoholic drinks license issued to his bar without giving him an opportunity to be heard yet he was not a party to the criminal case and he had not allowed the 2nd Respondent to operate the business outside the working hours prescribed in the license.

3. It is the applicant's case that the order made by the learned magistrate was final and illegal since it was unprocedurally made without following the principles of natural justice; that the order had the effect of curtailing his business operations and unless it was vacated, it will occasion him financial loss and irreparable damage.
4. In the exercise of the court's power under section 365 of the Criminal Procedure, the court decided to consider and determine the application without hearing any of the parties.
5. I have considered the application together with the depositions made in the supporting affidavit and annexures thereto.

Having done so, I find that the application invokes the revisional jurisdiction of the High Court donated by Section 362 as read with section 364 of the Criminal Procedure Code which empowers the court to call for and examine records of the lower court in criminal proceedings to satisfy itself as to the correctness, legality or propriety of any findings, sentence or order made by the trial court or the regularity of the proceedings in question.

6. Upon perusal of the trial court's original record which was forwarded to this court, I confirm that indeed the learned trial magistrate, hon. E. Wambugu revoked the alcoholic drinks license issued to Summer Bar after the 2nd respondent was convicted and sentenced on her own plea of guilty for the offence breaching the conditions spelt out in the license issued to the bar.

The record further shows that the impugned order was made without giving the applicant or the 2nd respondent an opportunity to be heard which breached the rules of natural justice given the adverse effects the order was bound to have on the applicant's business and possibly, the 2nd respondent's employment.

7. In any event, besides failure to comply with the rules of natural justice, the learned trial magistrate did not lay any legal basis for issuing such a drastic order when the person accused was not the holder of the license. Moreover, under part 2 of the fourth schedule of the Constitution of Kenya 2010, the function of regulating liquor businesses through licensing is left to County Governments which is executed through legislations passed by the respective County Assemblies and consequently, I am not satisfied that the trial court had jurisdiction to make the impugned order.
8. In view of the foregoing, the learned trial magistrate made an error of law when she made the impugned order which is an error that should be rectified by this court in the exercise of its revisional jurisdiction.

In the premises, I find merit in the notice of motion dated August 4, 2023 and it is hereby allowed on terms that the order made by the learned trial magistrate on July 24, 2023 revoking the licence issued to Summer Bar is hereby set aside.

9. On the prayer for costs, this is an application instituted pursuant to criminal proceedings which do not attract orders on costs given the centrality of public interest in criminal litigation.

I therefore decline to make any order on costs as sought in prayer 4.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 6TH DAY OF FEBRUARY, 2024.



C.W GITHUA
JUDGE

