



**Ol-Kalou Sub-County Liquor Traders v Ministry of Interior & 2 others
(Petition E002 of 2024) [2024] KEHC 3991 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3991 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
PETITION E002 OF 2024
CM KARIUKI, J
APRIL 9, 2024**

BETWEEN

OL-KALOU SUB-COUNTY LIQUOR TRADERS PETITIONER

AND

MINISTRY OF INTERIOR 1ST RESPONDENT

NYANDARUA COUNTY COMMISSIONER 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 12/3/2024 seeking conservatory orders under Articles 40 and 159 of *the Constitution* of Kenya. Along with the Constitutional Provision cited a Plethora of other statutory Provisions of *the constitution* and rules.
2. Essentially applicant on behalf of its members sought relief for the re-opening of the closed bars belonging to the petitioners MEMBER and an injunctive order to restrain respondents No. 1 and 2 from interfering with the operation of the petitioners' members' bar businesses inter alia.
3. Along with the application, a petition undated was lodged on 13/3/2024.
4. The petition sought declaratory, injunctive, and judicial review reliefs. The Notice of Motion is supported by the affidavit of Samuel Karanja sworn on 12/3/2024. He has also sworn an affidavit in support of the Petition on 12/3/2024.
5. He swore a further affidavit on 27/3/2024 after the court directed the same to be filed with an attachment disclosing the membership of the petitioner which shows the number to be 113 as of 29/1/2024. A list is attached S K 2 and S K 1 registration certificates though physically missing on the record.



6. The respondent response is done via an affidavit of Abdirisaac Jaldesa County Commissioner Nyandarua sworn on 7/3/2024. It has one annexure AJ 1 said to be a copy of directives issued on 6/3/2024 by C S Interior.
7. The application was argued on 3/4/2024 by both sides and the court reserved ruling on 9/4/2024.
8. The brief history of the matter is that the Cabinet Secretary Interior and National Government issued directives on 6/3/2024 according to section 4(2) of the [Preservation of Public Security Act](#) under paragraphs 6 and 25 and thereafter instructed the respondent to shut down all bars that were operating near residential houses and schools and those not approved to operate as such.
9. It is averred that Section 12 of Cap 12 prohibits the sale of alcoholic drinks in places near residential or basic education Institutions.
10. It is averred that the Petitioner members did not have licenses to authorize the operation of the business in issue.
11. According to the aforesaid directives on 8/3/2024 respondent No. 1 and 2 closed all bars belonging to the petitioners MEMBERS. There was no notice issued to that effect and the Petitioner members were not given a hearing, especially on determining the criteria of bars to be closed.
12. The Petitioner members complained that the some bars were favored in that they were not closed. Thus, the petitioners' membership complained they suffered huge losses as they had stock worth millions that could not be sold. The business was their source of livelihood.
13. The criteria for closure were not disclosed to them.
14. The Petitioner has annexed certificate of registration SK 1 (though not in the court file) list of membership (113) SK 2 copies of receipts for the year 2023 paying for the County Licences.
15. The County Government is tasked to inspect and issue receipts and licenses for the operation of bars within that locality. That exercise has not taken place.
16. Thus, the Applicant Petitioners seek the orders sought to be issued.

ANALYSIS AND DETERMINATION

17. The issuance of Conservatory orders is predicated on the provisions of [the Constitution](#) anchored on Article 23 Constitution of Kenya 2010. The same has been expounded via a plethora of case law which has spawned the guiding principles for the grant of the same orders.
18. Whereas the respondent justified their action behind the directive of 6/3/2024 which is not shown to have acquired imprimatur or seal of legality via gazettelement or parliamentary approval, the petitioner members predicated their case behind the fact that they were not notified of the intended action, they were not given a hearing, nor was there compliance of Article 47 of [the constitution](#) on fair administrative action principles and that they were lawfully running their business awaiting renewal of licenses with County Government and their livelihood is in jeopardy as they have no other source of the living.
19. Two basic factual cum legal issues emerge to wit, that there is an allegation of security threat by operation of unlicensed bars within residential and basic institutions areas and that the business of the bars are now closed until fresh vetting is done to determine the suitability of bar business to continue operation.



20. The law on grant of conservatory orders is laid down by the provisions of *the constitution*. The guiding principles of granting conservatory orders in constitutional applications were set out in the case of *Gitirau Munya vs Dickson Kithinji and 2 others* by the Supreme Court namely ‘...conservatory orders ..should be granted on inherent merit of a case bearing in mind the public interest, the constitutional values and proportionate magnitudes and the priority levels attributable to the relevant courses’
21. See also *BOM UHURU SEC SCHOOL VS COUNTY DIRECTOR OF EDUCATION & 2 OTHERS*, (2015) Eklr, *WK NKUJA VS MAGISTRATES AND JUDGES VETTING BOARD AND OTHERS*(2016) EKLR.

The issue of public interest has been raised by the deponent on the respondent side which was NOT supported by any evidence other THAN averment, instructions, and directives that came from the CS for Internal Security and National Government. Respondent no 2 being the county commissioner and the chairman of the Nyandarua County Security Committee, ought to have demonstrated facts gathered locally to support his averment, not mere bare averments.

Of course, matters of security and public health are taken seriously by our courts including our Local courts but serious issues entailing people's livelihood ought to be banned on concrete facts and on a basis supported by Article 47 of *the constitution* (on fair administrative Act) where people allegedly acting illegally are subjected to due process.

22. The court has gone through the record and found that none of the applicants' members had a current license (2024) to operate the bar business closed by the respondents. The County government of Nyandarua whose function is to vet and license bars is not a party herein. Schedule four part 2 (4) c of *the constitution*, the county Governments are mandated to take charge of liquor licensing, and part 2 (7) to generally develop and regulate trade licensing.
23. The court takes judicial notice that the state of affairs has been occasioned by the County Government of Nyandarua for non -non-compliance with the judgment of this court which nullified a statute on alcoholic drinks business control which directed a new act to be put in place within 12 months. The court notes that the new Act 2024 is in place and what the County Government is to do is expedite the vetting of the bar operators and issue or deny licensing under the law.
24. The question is then what will those with payment of receipts of 2023 awaiting license do as they wait for the process? What will be their source of living for bar owners, children, and employees, come from? Who will take care of their financial obligations et al?
25. Article 28 of *the Constitution* guarantees Citizens' right to dignity. It stipulates that” Every person has inherent dignity and the right to have that dignity respected and protected. Article 10(1) The national values and principles of governance include (b)... human dignity, equity, social justice, et al. The word “dignity” is also in Chapter Four, which is the Bill of Rights. Article 19 is on “Rights and Fundamental Freedoms”. It states that “the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings”
26. Interestingly, in this sub-article, not only are individuals said to have dignity, but also communities. The same outlook is manifest in the national oath and affirmation to be executed by the President, Acting President, and Deputy President at their assumption of office, in which they undertake to “protect and uphold the sovereignty, integrity, and dignity of the people of Kenya” (Republic of Kenya 2010, Third Schedule).



27. In addition, *the Constitution* of Kenya provides that in interpreting the Bill of Rights, a court, tribunal or other authority shall promote "the values that underlie an open and democratic society based on human dignity, equality, equity and freedom" (Republic of Kenya 2010, Article 20 (4) (a)). Here again, it is not clear what "values that underlie an open and democratic society" are: we are told that such a society is based on "human dignity, equality, equity, and freedom", but the phrase "values that underlie...*the Constitution* of Kenya is very unclear about the meaning of "dignity". This fact is most evident in Article 28, which, although it is titled "Human Dignity", does not explicate the meaning, basis, or scope of human dignity; instead, it simply states that "every person has inherent dignity and the right to have that dignity respected and protected."
28. , the American Heritage Dictionary defines "dignity" as the "quality or state of being worthy of esteem or respect" (The Editors of the American Heritage Dictionaries 2011).
29. on objects and functions of the National Police Service, *the Constitution* of Kenya states that the National Police Service shall, among other things, "train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity" (Republic of Kenya 2010, Article 244 (d)).
30. Article 47 of *the Constitution* of Kenya 2010 has constitutionalized the right to be given written reasons for administrative actions and decisions.
31. The complainants' issue in this matter effected by the respondents prima facie established the provisions of article 47 of *the constitution* were not complied with.
32. The Courts of law have considered the right to be given written reasons both as a constitutional ground for judicial review of administrative action under Article 47 of *the Constitution* and as a remedy available in judicial review as stated in Section 11 of the *Fair Administrative Action Act*. It has provided affected individuals with a basis to challenge an administrative action and decision through a judicial review process that not only preserves but also develops and progresses relevant common law principles.
33. If the petitioning members are in deprivation of a source of earning, livelihood, and subsistence will this accord with the standard of living congruent to the right to dignity?
34. The answer is in the negative. The respondents and the County Government of Nyandarua are capable of supervising a temporary measure of operation of the Applicant members while undergoing vetting on condition that they operate lawful business and trade with valid products not illicit brews pending the vetting process and verdict thereof and subject also to payment of any valid dues to the County Government. Of course, the issue of proximity to residential areas and the basic institution of running has to be taken into account if there is a law that stipulates that measure and with specification as to distance and location.
35. However, this court has no legal mandate to either license or order the operation of businesses without licenses as provided by the law. The court can however compel the county government to expedite the process of vetting of the complainants' licensing purposes. However, that is impeded by the fact that the county Government of Nyandarua is not a party in the instant matter. The complainants are at liberty to seek remedy against the same government for neglecting to put in place legislation in time on alcohol licensing leading to the situation of uncertainty on alcoholic drink business licensing.
36. The best the court can do is order the petition to be amended to include the County Government of Nyandarua and the matter be heard by viva voce evidence on a priority basis for respondents to prove their allegations and the provisions of law which mandated them to close bar businesses in issue.



37. Thus, the court makes the orders that;

- I. The Applicant shall amend their petition and serve within 5 days and the respondents shall respond to the amended petition within 5 days of service.
- II. between 22nd and 25th April 2024
- III. Costs in the main cause.**

Dated, Signed, and Delivered at Nyandarua this 9th day of April 2024

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C KARIUKI
JUDGE

HC PETITION NO. e002 of 2024 ruling	0
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