



Republic v Nairobi City County Alcoholic Drinks And Licensing Board & 2 others; Aggarwal (Exparte) (Application E082 of 2023) [2024] KEHC 4335 (KLR) (Judicial Review) (19 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JUDICIAL REVIEW
APPLICATION E082 OF 2023**

**J NGAAH, J
APRIL 19, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI CITY COUNTY ALCOHOLIC DRINKS AND LICENSING BOARD 1ST RESPONDENT

NAIROBI CITY COUNTY 2ND RESPONDENT

MINT SHACK LIMITED T/A BARRELS & STOOL RESTAURANT 3RD RESPONDENT

AND

NISHANT AGGARWAL EXPARTE

RULING

- 1, On 26 July 2023, the ex parte applicant obtained leave to file a substantive motion for judicial review reliefs of prohibition and certiorari. In granting the leave, this Honourable Court directed as follows:

I have read the applicant’s chamber summons dated 26 July 2023 filed under a certificate of urgency of even date. The application is hereby certified urgent. The applicant is granted leave to file a substantive motion for judicial review orders of certiorari and prohibition in terms of prayers 2 and 3 of the summons. The substantive motion shall be filed and served within 7 days of the date of this order. The respondents shall file and serve their response within 7 days of the date of service of the applicant’s motion.



Directions on the hearing and disposal of the main suit are as follows:

1. The motion shall be disposed of by way of written submissions.
2. The applicant's submissions shall be filed and served within 7 days of the date of service of the respondents' response.
3. The respondents' submissions shall be filed and served within 7 days of the date of service of the applicant's submissions.
4. Highlighting of submissions is set for 4 October 2023.

It is so ordered.”

2. Leave was granted on 26 July 2023 and, therefore, if the applicant was directed to file and serve the substantive motion within seven days of that date, the motion ought to have been filed by 3 August 2023. But it was not until 5 September 2023 that the motion was filed, about 33 or so days after the last date on which the application ought to have been filed.
3. Meanwhile, by an application dated 3 August 2023 and filed in court on 7 August 2023, the 3rd respondent applied to have leave granted to the applicant to file the application for judicial review vacated on, among other grounds, that the suit is sub judice since the applicant filed a suit over the same subject matter and apparently against the same parties in Nairobi ELC Case no. E193 of 2023.
4. The record speaks for itself and, there should not be any debate that the applicant's motion was filed outside time. Order 53 Rule 3 of the Civil Procedure Rules is specific on when a motion ought to be filed once leave has been granted. It states as follows:

53. Rule 3. (1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing. (Emphasis added).

5. If I had not specified the time within which the motion was to be filed, it should have been filed within 21 days of the date of grant of leave.
6. It has turned out that the motion was filed neither within the time I meted out nor the time prescribed by the Rules.
7. No explanation has been proffered why the applicant could not comply with the timelines directed by the court or prescribed by the Rules. His argument is that:

More importantly, if this Honourable Court in its computation of time found that there was any delay, the same is regretted and should not be attributed to the Applicant but rather his counsel.

“...if there was any delay, that same was not intentional and despite that delay, justice can still be done to the parties by enlarging time and allowing the issues which are raised in the motion ventilated or canvassed at an appropriate hearing.”

8. Even in the absence of any explanation for the delay, the mandatory terms in which Order 53 Rule 3(1) is couched does not leave any room for exercise of discretion by the court to extend time. It does not also matter that the delay could have been occasioned by the applicant's counsel. In any event, the



applicant has not applied for extension of time so that whether time could possibly have been extended is a moot point.

9. What this boils down to is that if a motion is filed outside the limitation period, it is a nullity, without any legal consequence. The purported motion before court is one such a motion. It is hereby struck out with costs to the respondents. It is so ordered.

SIGNED, DATED AND DELIVERED ON 19 APRIL 2024

NGAAH JAIRUS

JUDGE

