



**Republic v County Government of Taita Taveta; Juma Barsley Mwashimba  
t/a JV Hotel Mwatate (Exparte Applicant) (Judicial Review Miscellaneous  
Application E002 of 2024) [2024] KEHC 6837 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 6837 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E002 OF 2024**

**GMA DULU, J**

**APRIL 18, 2024**

**N THE MATTER OF ORDER 53 RULE 1, 2, 3 AND 4 OF CIVIL PROCEDURE  
RULES AND ALL ENABLING PROVISIONS OF LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE TAITA TAVETA COUNTY  
ALCOHOLIC DRINKS CONTROL AND LICENSING ACT, 2016**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE  
LAW REFORM ACT, CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ARTICLES 47 AND 50 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... RESPONDENT**

**AND**

**JUMA BARSLEY MWASHIMBA T/A JV HOTEL MWATATE .... EXPARTE  
APPLICANT**

**RULING**

1. In this Judicial Review matter the main Notice of Motion dated 12<sup>th</sup> April 2024 was filed after leave to commence Judicial Review proceedings was granted by the court on 20<sup>th</sup> March 2024.



2. On the mention date which was on 15<sup>th</sup> April 2024, counsel for the applicant Mr. Mutinda asked that this court grants interim stay of the action of the respondent to deny the applicant a trading licence and closing the applicant's business premises known as JV Hotel at Mwatate.
3. I have perused and considered the application and all the documents filed.
4. I note that the information pleaded by the applicant is that they paid Kshs. 50,000/= for renewal of annual licence, but on 12<sup>th</sup> March 2024 the respondent's inspection agents communicated that the business be closed for being in close proximity with an educational institution, which is the basis of these proceedings.
5. On my part, considering that the interim orders sought are discretionary orders, and since the premises have already been closed, I find that granting the orders sought of re-opening the business, will have the effect of determining the substantive suit or proceedings herein before hearing date.
6. In addition to the above, it is apparent from the pleadings that the issue in contest is based on alleged protection of learners in educational institutions, some of whom might be children and, in light of the provisions of Article 53(2) of the *Constitution*, I take the view that it will not be appropriate for this court to grant interim orders to reopen the subject premises for business now before full hearing of the main motion.
7. I thus decline to grant interim orders sought, and instead order that the Notice of Motion be fast tracked in its hearing and determination.

**DATED, SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF APRIL 2024 IN OPEN COURT AT VOI.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred – Court Assistant

Mr. Mutinda for ex-parte applicant

No appearance for respondents

