



Republic v County Government of Taita Taveta; Mwashimba t/a JV Hotel Mwatate (Exparte Applicant) (Judicial Review E002 of 2024) [2024] KEHC 6929 (KLR) (5 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6929 (KLR)

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

GMA DULU, J

JUNE 5, 2024

IN THE MATTER OF: APPLICATION BY JUMA BARSLEY MWASHIMBA FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN 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. Before me is a Judicial Review application by way of Notice of Motion dated 9th April 2024 filed through counsel Mutinda & Wambura Nthiga.



2. The application was filed under Order 53 Rule 3 and 4 of the *Civil Procedure Rules* 2010, as well as Sections 8, 9, 10 and 11 of the *Fair Administrative Actions Act*, after leave was granted by this court, and seeks the following orders:-
 1. That the court be pleased to issue an order of certiorari to remove to this court and quash and declare as null and void, the decision of the respondent communicated on 12th March 2024 on the closure of the applicants business premise popularly known as JV Hotel Mwatate and the refusal to issue licences.
 2. That the court be pleased to issue an order of Mandamus compelling the respondents to immediately open the applicant's business premise popularly known as JV HotelMwatate and issue the relevant licences forthwith.
 3. That the court be pleased to issue an order of prohibition to bar and/or restrain the respondents from harassing, frustrating and/or closing down the applicant's business premise popularly known as JV HOTEL, Mwatate.
 4. That the court be pleased to grant such or further orders it deems fit to grant in the interests of justice.
 5. That the costs of the application be awarded to the ex-parte applicant herein.
3. The application has grounds on the face of the Notice of Motion, and as required in Judicial Review proceedings, it is grounded on the verifying affidavit and the statement of facts filed with the Chamber Summons for leave.
4. Though the application was served on the respondent, and an affidavit of service sworn by Nicholas Lawrence Mchanji a process server on 12th April 2024 was filed, no response was filed by the respondents.
5. The application was canvassed through written submissions, and only the applicant's counsel Mutinda & Wambura Nthiga Advocates filed submissions urging this court to grant the orders sought.
6. Having perused and considered the application and other documents filed, as well as the written submissions filed by counsel for the applicant, and in view of the fact that no response has been filed by the respondent, I find no basis for not allowing the application.
7. I thus allow the application, and order as follows:-
 - i. This court hereby issues an order of certiorari to remove to this court and quash and declare null and void, the decision of the respondent communicated on 12th March 2024 on the closure of the applicant's business premise popularly known an JV Hotel Mwatate and the refusal to issue licences.
 - ii. This court hereby issues an order of mandamus compelling the respondent to immediately open the applicant's premise popularly known as JV HotelMwatate and issue the relevant licences forthwith.
 - iii. This court hereby issues an order of prohibition to bar and/or restrain the respondent from harassing, frustrating and/or closing down the applicant's business premise popularly known as JV HOTEL Mwatate.
 - iv. The ex-parte applicant is awarded the costs of these proceedings which costs are payable by the respondent.



DATED, SIGNED AND DELIVERED THIS 5TH DAY OF JUNE 2024 AT VOI IN OPEN COURT VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Ms. Wambura for applicant

