



Vaxx One Thousand v Uasin Gishu Alcoholic Drinks Control Board (Judicial Review E011 of 2023) [2024] KEHC 9985 (KLR) (9 August 2024) (Ruling)

Neutral citation: [2024] KEHC 9985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
JUDICIAL REVIEW E011 OF 2023
RN NYAKUNDI, J
AUGUST 9, 2024**

BETWEEN

VAXX ONE THOUSAND PETITIONER

AND

UASIN GISHU ALCOHOLIC DRINKS CONTROL BOARD RESPONDENT

RULING

1. The Respondent raised this Notice of Preliminary Objection dated 5th December 2023 premised on the following grounds;
 1. That the suit against the Respondents is bad in law in light of Sections 29 and 30 of the [Uasin Gishu County Alcoholic Drinks Control Act](#), 2014 and Section 9 of the [Fair Administrative Actions Act](#), No.4 of 2015 for the following reasons;
 2. That this suit is premature before this court and not ripe to warrant the exercise of this court's jurisdiction because the Applicant has infringed on the doctrine of exhaustion of available administrative remedies before filing this matter;
 3. That there are administrative mechanisms including internal mechanisms for appeal or review of the decisions of the County Committee that made the decision subject of these proceedings.
 4. That the above cited laws require that all remedies available under any other written law are first exhausted before a party moves to court.
 5. That this suit is an abuse of court process and bad in law incapable of being entertained by the court at this point and the same should be struck out with costs to the Respondents.
2. The parties were directed to prosecute the preliminary objection vide written submissions.



Applicant's Submissions

3. Learned counsel for the 1st respondent filed submissions dated 8th March 2024 in support of the preliminary objection. Counsel cited section 5 of the [Civil Procedure Act](#) and urged that there are matters where the High Court has original jurisdiction by dint of Article 165 of [the Constitution](#) and there are those that are concerned with issuance and suspension of liquor and night club licenses whose jurisdiction is the preserve of the County Alcoholic Drinks Control Board under the [Uasin Gishu County Alcoholic Drinks Act](#).
4. It is the case of the 2nd respondent that section 10 of the [Uasin Gishu County Alcoholic Drinks Act](#) establishes the Review Committee and/or appeals committee. The role of the committee is to hear appeals on the decisions of the county committee. Counsel referred the court to the provisions of section 10(2)(c) of the [Act](#) and additionally, submitted that under section 4 of the [Uasin Gishu County Alcoholic Drinks Act](#) the board is established and given functions under sub section 2 to support and facilitate county committees established under the act in carrying out their functions. He submitted that under section 9(1) there is established the County Alcoholic Drinks Regulation Committee which shall issue licenses in accordance with the act . The board is mandated to ensure all the committees established under the act are facilitated and supported.
5. It is the 2nd respondent's case that in instances where an applicant has applied for a new license or a renewal the applicant may within 14 days of such refusal, request in writing the review of such refusal of the appeals committee. The committee shall notify the county committee of the pending review and within 21 days it would make a final determination. Section 17 of the [act](#) laid out the actions the committee may take. Further, that the applicant may appeal against a refusal of the committee to the court. In a nutshell, counsel urged that the applicant has invoked the jurisdiction of the high court before exhausting the available remedies under the [act](#).
6. It is the respondent's case that it is only after a decision by the appeals committee has been made under section 10 and 17 of the [act](#), that the jurisdiction of this court can be invoked. Counsel submitted that the decision to initiate the judicial review before exhausting the available remedies is in contravention of the [Uasin Gishu County Alcoholic Drinks Act](#). He cited the case of [Amy Kagendo mate v Prime Bank Credit Reference Bureau Limited](#) (2013) eKLR in support of this submission.
7. Counsel urged that the doctrine of exhaustion of remedies is a fundamental principle of administrative law and the court may decline to hear cases where administrative remedies have not been exhausted. Counsel cited the case of [William Odhiambo Ramogi & 3 others v Attorney general & 4 others; Muslims for Human Rights & 2 others \(Interested Parties\)](#) (2020) eKLR where the court expressed itself on the doctrine of exhaustion. Counsel reiterated that the applicants' failure to comply with statutory requirements to first seek recourse through the Uasin Gishu County Alcoholic Drinks Control Appeals/Review Committee is defective in law warranting this court intervention in allowing the objection.
8. Counsel urged the court to allow the objection with costs.

Respondent's submissions

9. Learned counsel for the applicant filed submissions dated 18th March 2024 in opposition to the preliminary objection. He submitted that this is not a civil dispute conventionally litigated in civil Courts. The matter before Court is a judicial review application, preserved for vindication of purely constitutional rights. The application seeks to review the administrative action of the Director of the Uasin Gishu County alcoholic Drinks Control Board (ADCDB), purporting to suspend the applicant's



Liquor and Night Club licenses. This is a public administrative office within the County Public Service and subject to judicial review process. Judicial review is limited to ensuring compliance by the administrative bodies with the principles of proportionality, legitimate expectation and reasonableness in the carrying out of functions by such bodies.

10. Counsel cited Section(s) 29 and 30 of the Uasin Gishu County *Alcoholic Drinks Control Act*, 2014 and urged that the provisions are irrelevant to the proceedings before this Court. The provisions relate to the administrative mechanisms for appeal or review of the decisions of the County Committee established in the *Act*. The instant proceedings does not seek to impugn a decision(s) of the County Committee. No such decision is an issue before the Court. As to whether or not the impugned decision has any connection and/or relationship with the County Committee is purely a matter of fact which cannot be determined by way of a preliminary objection. According to trite practice, a preliminary objection by its nature ought to raise a pure point of law which is usually on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
11. Counsel urged that the preliminary objection ought therefore to be dismissed with costs to the applicant, for being irrelevant and out of context with the subject of the Judicial review.

Analysis & Determination

12. The following issue arises for determination;
Whether the Preliminary Objection meets the required threshold
Whether the suit is prematurely before this court

Whether the Preliminary Objection meets the required threshold

13. The law pertaining to Preliminary Objections is well captured by all the parties herein. In the famous *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors ltd* (1969) EA 696, the Court of Appeal for Eastern Africa, stated (Law JA) in part that

“So far as I’m aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Sir Charles Newbold President of the Court in the Mukisa case went on to state;

“a Preliminary Objection cannot be said to be such if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.” (Page 710).

14. It follows that to determine the preliminary objection the court must first determine whether they raise valid points of law.

Whether the suit is bad in law in light of sections 29 and 30 of the Uasin Gishu *Alcoholic Drinks Control Act*

15. Section 29 of the Uasin Gishu *Alcoholic Drinks Control Act* provides as follows;

29.



- (1) A County public health officer within whose Reports by jurisdiction the premises fall shall report to the County public health officers and Committee any licensed premises which are deficient in police their state of sanitary or drainage conditions, or which officers are in bad repair.
- (2) A County public health officer or any person authorized by him in writing in that behalf may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.
- (3) A police officer not below the rank of Inspector shall report in writing to the chairperson of the appropriate County Committee every case in which a licensee is of drunken habits or keeps a disorderly house, or commits any breach of any of the provisions of this Act or of his licence.
- (4) A police officer not below the rank of Inspector may without written authority enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

Section 30 of the act provides as follows;

30.

- (1) Upon receipt of a report made under Cancellation section 29 the County Committee shall— of licence
 - (a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned therewith, informing him that at a meeting of the County Committee to be held on a date to be specified, but not less than thirty days there from, the report will be considered by the County Committee;
 - (b) send a copy of the report to every member of the County committee and to the Officer Commanding Police Services in the County;
 - (c) inform the County public health officer or the police officer, as the case may be, of the date upon which the Sub-county committee will consider the report, and require him to attend on the date specified.
- (2) Any licensee concerning whom a report is to be considered may appear in person or by advocate before the County Committee.
- (3) The County Committee, having duly considered the report and having heard the licensee, if he appears, may, if it thinks fit, cancel the licence of the licensee reported upon, or it may make such an order in respect of such licence or the licensed premises specified therein as, in the opinion of the County Committee, is necessary.
- (4) Any person aggrieved by the decision of the County committee upon any such report may within twenty-one days appeal against the decision to Court.
- (5) The Court, on an appeal under this section, may confirm or reverse the decision of the County Committee.
- (6) If a licence is cancelled or if on appeal under sub section (5), the appeal is dismissed by the Court, the licensee shall be entitled, on payment of the proportionate part of the fee for the appropriate licence, to a licence of such description and for such period,



not exceeding three months, as the Sub-county committee may deem necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises, such licence to run from the date of the decision of the County Committee or of the Court as the case may be.

16. In essence, the two sections lay out the process for reporting deficient premises and cancellation of the licenses issued to said premises. Section 30 lays out the process of cancellation of licenses by the County Committee and the appeal process against a cancellation. Section 10 of the act is also relevant as it establishes an appeals committee. It states;

10.

- (1) There is established the County Alcoholic Review Drinks Regulations Appeals Committee.
- (2) The Appeals Committee shall consist of:-
 - (a) the Chairperson who shall be an advocate of the High Court of Kenya of not less than seven (7) years standing or has served as a judge;
 - (b) four other members being residents of the County knowledgeable in matters of public health, environment, physical planning, public administration and security.
 - (c) the Appeals Committee shall be responsible for hearing appeals on the decisions made by the County Committee.
- (3) The conduct of business and affairs of the Appeals Committee shall be in such manner as may be prescribed by rules set by the Executive Member.
- (4) The Board shall provide administrative services to the Appeals Committee. An appeal should be heard and determined within one month.

17. Section 17 of the Act provides for the review process of any cancelled licenses and further, section 19 of the act provides for the process of appeal to courts if aggrieved with the decision of the review committee. It states as follows;

17

- (1) An applicant whose application for a new review licence, to renew or transfer a licence has been refused or cancelled may within fourteen (14) days of such refusal, request in writing the review of such refusal to the Appeals Committee.
- (2) A person aggrieved by the decision of the sub county committee to grant a new licence or to renew a licence may request in writing appeal against such decision.
- (3) Upon receipt of a request under this section, the Appeals Committee shall notify the County committee of the pending review.
- (4) The Appeals Committee shall within twenty-one days consider and make a final determination on the request for review.
- (5) The Appeals Committee may
 - (a) dismiss the request for review if in its opinion, the request is frivolous or vexatious;



- (b) uphold the decision of the County committee;
- (c) annul the decision of the County committee
- (d) give directions to the County committee with respect to any action to be taken;
- (e) make any other declaration as it may deem fit.

18. It is my considered view that there exists an adequate review and appeals process for cancellation of licenses that has been laid out in the governing legislation. However, the provisions relate to instances where the license of an applicant has been cancelled after a report by public health officers to the premises. The cancellation is anticipated to be a decision of the County Committee and therefore the provisions cited apply to a situation involving a County Committee decision. The decision that led to this suit is the cancellation of the applicants' license by the alcoholic drinks control board pending an investigation by the County Alcoholic Drinks Regulation Committee. It is the process at arriving at the cancellation that the applicant seeks to challenge and therefore, I am in agreement with the applicant that the provisions of section 29 and 30 of the act are irrelevant to the present suit.
19. There is no process provided in legislation with regards to the current scenario. As to whether the impugned cancellation was ultra vires, that is a question that will be tackled in the Judicial Review.
20. It follows that the Notice of preliminary objection, being premised on section 29 and 30, fails in its entirety due to the fact that the said provisions do not relate to the impugned decision.

The Notice of Preliminary Objection is hereby dismissed with costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 9TH DAY OF AUGUST, 2024.

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R. NYAKUNDI

JUDGE

