



**Republic v County Government of Nakuru, Office of Alcoholic Drinks & 2 others;  
Mwangi t/a Mauche Wines and Spirits & another (Exparte Applicants) (Miscellaneous  
Civil Application 293 of 2023) [2024] KEHC 12908 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12908 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAKURU**  
**MISCELLANEOUS CIVIL APPLICATION 293 OF 2023**  
**SM MOHOCHI, J**  
**OCTOBER 23, 2024**  
**IN THE MATTER OF THE LAW REFORMS ACT AS READ**  
**WITH ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**  
**AND**  
**IN THE MATTER OF THE NAKURU COUNTY ALCOHOLIC DRINKS ACT, NO 4 OF 2010**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL REVIEW**  
**ORDERS OF CERTIORARI, MANDUMUS AND PROHIBITION**  
  
**BETWEEN**  
**REPUBLIC ..... APPLICANT**  
  
**AND**  
**COUNTY GOVERNMENT OF NAKURU, OFFICE OF ALCOHOLIC**  
**DRINKS ..... 1<sup>ST</sup> RESPONDENT**  
**OFFICE OF THE DIRECTORATE OF ALCOHOLIC DRINKS REGULATION**  
**COMMITTEE BAHATI SUB-COUNTY ..... 2<sup>ND</sup> RESPONDENT**  
**OCS GITHIORO POLICE STATION ..... 3<sup>RD</sup> RESPONDENT**  
  
**AND**  
**JOHN KAMAU MWANGI T/A MAUCHE WINES AND**  
**SPIRITS ..... EXPARTE APPLICANT**  
**ALASKA WINES KELVIN NDERITU T/A CLUB WASARI .... EXPARTE**  
**APPLICANT**



## RULING

1. The Ex-Parte Applicant's moved this Court vide Chamber Summons Application dated 6<sup>th</sup> September, 2023 under Section 8 of the [Law Reform Act](#) and Order 53 Rules 1 and 2 of the Civil Procedure Rules seeking the following:
  - a. Spent;
  - b. That pending inter partes hearing and determination of this Application, the Honourable Court be pleased to grant the Applicants an order to operate their establishments previous licences and application;
  - c. That costs of this application be provided for.
2. The Ex-Parte Applicants who are acting in person filed a document titled "Notice to the Registrar under 53 Rule 1(3)" wherein they seek leave to institute Judicial Review proceedings for the following orders:
  - i. Spent
  - ii. That pending the inter partes hearing and determination of this Application, the Honourable Court be pleased to grant the Applicants an order to operate their establishments with licences of 2022.
  - iii. That pending the hearing and determination of this application, the Honourable Court be pleased to issue an order compelling the 1<sup>st</sup> Respondent to approve and instruct the Alcohol Licencing Board to issue the Applicants with trade licences for the year 2023.
  - iv. Leave be granted for the applicants to apply for the following orders:
    - a. An order of Certiorari to remove into the High Court for the purpose of it being quashed the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to disapprove the Trade and Liquor Licences;
    - b. An order of Prohibition to remove into the High Court for the purposes of prohibiting the 3<sup>rd</sup> Respondent either by himself, his agents and or anyone claiming under him from harassing, arresting the Applicants and/or their employees and or interfering with the smooth running of Mauche Wines, Alaska Wines and Club Wasafi located in Bahati Sub-County on account of the alcohol licence of 2023;
    - c. An Order of Mandamus to remove into this Honourable Court and compel the 3<sup>rd</sup> Respondent not to confiscate any of the stock from the Applicants' premises;
    - d. The grant of leave to apply for an order of Prohibition, Certiorari and Mandamus aforesaid do operate as stay any charges intended or against the applicants or their employees on account of the alcohol licence of 2019
    - e. Cost of and incidental to the application to provide for;
    - f. Such further and other reliefs that the Honourable Court may deem just and expedient to grant.



3. The grounds of the application are highlighted in the Applicants' Statutory Statement and the Verifying Affidavit jointly sworn by the Ex-parte Applicants; all on even date. In summary, the main grounds are that without proper grounds while approving for other establishments, the Respondents disapproved the application for licences of the Ex-Parte Applicants vide letters dated 29<sup>th</sup> June, 2023 and 5<sup>th</sup> July, 2023. That the Ex-Parte Applicants had met all the requirements and had licences from the previous years.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents through the County Attorney opposed the application through Grounds of Opposition dated 12<sup>th</sup> June, 2024 on grounds that the Applicants had failed to adhere to the provisions of Section 18 of the Nakuru County *Alcoholic Drinks Control Act*, 2014 and that the suit is bad in law, vexatious and an abuse of the Court's process.

### **Applicant's Submissions**

5. The Applicants in their submissions dated 31<sup>st</sup> January, 2024 submitted that the refusal to renew their licences was in bad faith discriminative and without proper motive.
6. They contended that they were not afforded an opportunity to attend to the proceedings as provided for under Section 11 of the Nakuru county *Alcoholic Drinks Control Act*, 2014 and therefore not afforded an opportunity to be heard which was against the rules of natural justice.
7. The Ex-Parte Applicants submitted that they had a legitimate expectation that having operated their business in the previous years and had been getting licences they had met the inspection threshold.
8. It was their argument that that a legitimate expectation was created by renewal of the licences in the previous years and relied on the case of Republic v Kenya Bureau of Standards Ex-Parte Mountain Slopes Commercial Services Limited.

### **Respondent's Submissions**

9. The Respondents through submissions dated 12<sup>th</sup> June, 2024 on one issue on whether the Ex-Parte Applicants are entitled to the reliefs sought.
10. The Respondent's counsel submitted that Section 18 of Nakuru County *Alcoholic Drinks Control Act*, 2014 provides that an appeal for refusal of licence transfer or renewal can be done to the High Court within 21 days and that the Court should strike out the application due to the delay in approaching Court. That the Court should not endorse their indolence.
11. Counsel for the Respondent argued that the application is bad in law, vexatious and an abuse of the Court's process for the reason that the Ex-parte Applicants have moved Court without following the provisions of Order 53 and the orders sought cannot be issued since no substantive judicial review application was ever filed.
12. That the judicial review reliefs cannot be granted in a state of vacuum. The principles for the grant of the orders in the nature sought herein is well crystalized in this jurisdiction. What is important is the application of the same to the facts of each case. It was well put by Professor Wade in a passage in his treatise on Administrative Law, 5th Edition at page 362 and approved in the case of the Boundary Commission [1983] 2 WLR 458, 475:

“The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness



is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore resist the temptation to draw the bounds too lightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended.”

13. That notwithstanding by the ex-Parte Applicants have moved the Court under Sections 8 and 9 of the *Law Reform Act*, Cap. 26 and Order 53 of the Civil Procedure Rules, 2010 the narrow common law approach is thus bound by the provisions of Section 11 of the Fair Administrative Action, Act, 2015.
14. The doctrine of exhaustion in Kenya traces its origin from Article 159(2)(c) of *the Constitution* which recognizes and entrenches the use of alternative mechanisms of dispute resolution in the following terms: -

159

- (2) In exercising judicial authority, the Courts and tribunals shall be guided by the following principles-
  - (a) ...
  - (b) ...
  - (c) alternative forms of dispute resolution including resolution, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause 3.

15. Clause 3 is on traditional dispute resolution mechanisms.
16. The doctrine of exhaustion was comprehensively dealt with by a 5-Judge Bench in Mombasa High Court Constitutional Petition No 159 of 2018 consolidated with Constitutional Petition No 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR. The Court stated as follows:
  52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in R v Independent Electoral and Boundaries Commission (I E B C) ex parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR, where the Court opined thus:
    42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in Speaker of National Assembly v Karume [1992] KLR 21 in the following oft-repeated words:

Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.



43. While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine.
17. The Objection raised herein by the County Attorney is that the Ex-Parte Applicants are “jumping the gun” moving this Court without having exhausted subsisting administrative mechanisms.
18. Section 10 of Nakuru County *Alcoholic Drinks Control Act*, 2014 provides for a review committee to review on appeal decisions by Sub-County Committee pursuant to Section 17.
19. While the motion before me is couched as a Judicial Review Application, it was filed as a High Court Miscellaneous Application and the same is not anchored against any suit.
20. The Court has equally tried to locate if leave sought was ever granted and if the Ex-parte Applicants ever complied with such leave? The same is absent.
21. This suit is fatally defective and incurable bad in law. The Judicial Review jurisdiction of this Court is a unique jurisdiction cementing and fostering the national culture of justification flowing from *the constitution*. It is not an ordinary motion to be invoked at will as and may.
22. A party aggrieved of the decision review committee may move the High Court pursuant to Section 18 of Nakuru County *Alcoholic Drinks Control Act*, 2014.
23. I have no doubt that the ex-parte Applicants have prematurely invoked the jurisdiction of this Court and they ought to have utilized and exhausted the mechanism provided for under the Nakuru County *Alcoholic Drinks Control Act*, 2014.
24. This Court this finds that the Ex-Parte Applicants Application for Judicial Review is bereft of merit and accordingly dismiss the same.
25. Parties shall bear their own costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 23<sup>RD</sup> DAY OF OCTOBER 2024.**

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**MOHOCHI S.M**  
**JUDGE**

