



**Galaczy Ventures Company Limited & 6 others v Baringo County Government & 3 others
(Petition E005 of 2024) [2024] KEHC 14530 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14530 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
PETITION E005 OF 2024**

RB NGETICH, J

NOVEMBER 14, 2024

**IN THE MATTER OF ARTICLES 1,2,3,10,22,23,27,28,35,36,40,43,47,48,50,159(2)
(D),165(3) (B),185 AND 258(1) AND 2 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF RULE 4 OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013**

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACT 2015

AND

**IN THE MATTER OF THE ALCOHOLIC DRINK CONTROL ACT NO. 4 OF 2010 LAWS OF
KENYA AND THE FOURTH SCHEDULE OF THE ALCOHOLIC DRINKS CONTROL ACT**

AND

**IN THE MATTER OF THE BARINGO COUNTY
ALCOHOLIC DRINK CONTROL ACT 2014**

AND

**IN THE MATTER OF THE DECISION OF THE BARINGO SUB
COUNTY ALCOHOLIC DRINKS REGULATIONS COMMITTEE**

BETWEEN

GALACZY VENTURES COMPANY LIMITED 1ST PETITIONER

VICTOR KIMOSOP T/A REGALWINES AND SPIRITS 2ND PETITIONER

RANGONSH COMPANY LIMITED 3RD PETITIONER

**DAVID KIPCHUMBA LIMO T/A KERIO VALLEY ENTERPRISE 4TH
PETITIONER**



DUNCAN KIPSAFARI T/A HILLS WINES AND SPIRIT 5TH PETITIONER
JANE ROSE CHEROTICH T/A WAYSIDE WINES AND
SPIRIT 6TH PETITIONER
DANCAN KIP SARARI T/A KETRKOROS BAR AND RESTAURANT ALSO
KNOWN AS COOL WATERS 7TH PETITIONER

AND

BARINGO COUNTY GOVERNMENT 1ST RESPONDENT
COUNTY CHAIRMAN LIQUOR LICENCING COMMITTEE BARINGO
COUNTY 2ND RESPONDENT
DIRECTOR OF ALCOHOLIC DRINKS OF THE COUNTY GOVERNMENT OF
BARINGO 3RD RESPONDENT
BARINGO SUB-COUNTY ALCOHOLIC DRINKS REGULATIONS
COMMITTEE 4TH RESPONDENT

JUDGMENT

1. The petitioners have moved this court vide a petition dated 23rd May, 2024 seeking for:-
 - a. A declaration that the Respondent(s) action and/or decision contained in the letter dated 9th May, 2024 is illegal, invalid, unfair, arbitrary and a total violation of the Petitioner(s) rights as enshrined in *the Constitution*.
 - b. An Order for certiorari to issue removing into Honourable court the decision of the 4th Respondent contained in the letter dated 9th May, 2024 quashing the same and in lieu thereof an order to issue directing the Respondents to issue and/or renew the petitioner(s) business licences for the year 2024 subject to payment of the requisite charges/fees.
 - c. An order for Mandamus to issue against the 4th Respondent compelling the 4th Respondent to renew the Petitioners Alcoholic Drink Retail license in respect to their respective businesses for the year 2024.
 - d. Damages for loss of business on account of the notice issued by the Respondents and or actions.
 - e. Costs of the petition to be awarded to the petitioners.
2. The Petition is founded on the grounds that the Petitioner(s) applied for the renewal of their respective Business Licences for the year 2024 upon expiry of their 2023 licenses to the Respondent (s) and made the requisite payment(s) for the application for renewal of the said licenses in line with the provisions of the Baringo County *Alcoholic Drinks control Act*, 2014. That the Petitioner(s) upon making the aforesaid application(s) for renewal of their business licences, had legitimate expectation of their renewal of their Licences.
3. Further that the Petitioners waited for more than 21 days provided by statute to receive the renewal licences and or any communication to no avail until 9th May, 2024 four (4) months down the line when they received notices.



4. That the Respondent (s) without regard to the petitioner(s) right(s) to trade and without consultation and in total violation of the Petitioner(s) right as to be heard enshrined under Article 50 of *the Constitution* of Kenya 2010, unilaterally issued the Petitioner(s) notices denying the Petitioner (s) their Liquor license(s) for the year 2024 without any valid reason and in further violation of the petitioner(s) rights to trade condemned the petitioner(s) without giving them an opportunity to be heard on account of alleged and undisclosed inspection of the premises by the Baringo Sub-County Alcoholic Drinks Committee through a purported vetting meeting allegedly held on 26th March, 2024.
5. That the Respondents without any colour of right and in total violation and/or contravention of Article 47 of *the Constitution* of Kenya 2010 proceeded to notify the Petitioners of their decision not to approve the application(s) for renewal of the Alcoholic Drink Licenses for the year 2024 without giving and/or according the petitioners an opportunity to be heard on the matter before the decision was made.
6. That in further contravention of the Petitioner(s) rights, to fair administrative action as captured under Article 47 of *the Constitution* of Kenya 2010, the Respondents proceeded to issue a notice indicating that the non-approval of the business licence(s) was on account undisclosed of alleged non-compliance on the part of the Petitioner(s) with the prerequisite statutory requirements.
7. That further the Respondent(s) in total violation of *the Constitution* of Kenya 2010 and in particular the provisions of Article 35 of *the Constitution*, as to the right to access public information, denied the petitioner(s) information with regard to the alleged pre-requisite statutory requirements.
8. That the Respondents in total breach and/or disregard to the Petitioner(s) rights directed the ceasing of all operations of the petitioner(s) business(es) and threatened to revoke the petitioner(s) licences contrary to their own notice as no licence had been issued capable of being revoked. It is Petitioner(s) position that the Respondents actions are in total violation and contravention of the law and should not be allowed to stand as they offend the supreme Law of the land, *the Constitution* of Kenya 2010.
9. The Petitioner(s) contend that the decision by the 4th Respondent to deny them the Liquor Business license(s) is arbitrary orchestrated with malice and made in bad faith and the actions by the Respondent(s) are discriminatory and in total violation of Article 27 of *the Constitution* of Kenya 2010.
10. The Petitioner(s) aver that they have not been informed and/or notified of the reasons that formed the basis of the alleged vetting meeting allegedly held on 26/3/2024 by then Baringo Central Sub-County Alcoholic Drinks Committee whereby the decision to deny the Petitioner(s) their business licenses was reached.
11. The Petitioners maintain that if at all such meetings were held, it contravenes Article 10 of *the Constitution* of Kenya 2010 of want of public participation and the reason(s) for non-approval of the business licenses for the year 2024 are unknown to them for want of disclosure and/or publication by the Respondent(s) to facilitate compliance (if any) in line with Article 35 of *the Constitution* of Kenya 2010.
12. The Petitioners maintain that they have been carrying out their respective Liquor businesses for many years, kept their premises in a tenable condition and good order to meet the high standards of hygiene expected of such establishments and ensured the smooth running of their businesses.
13. The Petitioners contend that the alleged pre-requisite statutory requirements in the said notice of 9th May, 2024 are the Respondents' creation intended to deny the Petitioners an opportunity to do business within Baringo County to disadvantage them to their business competitors who are connected and/or related to the Respondents and or alies to the Respondent's officers. The



Petitioner(s) maintain that they have a right to property and to do business anywhere within the Republic of Kenya as provided under Article 40 of *the Constitution* of Kenya 2010.

14. The Petitioners maintain that they are law abiding citizens, legitimate business entities and or concerns who have been engaging in their respective businesses lawfully and are ready and willing to comply and/or meet any legal requirements imposed by law for the issuance of the licences upon notice and/or notification.
15. It is the Petitioners' position that the 3rd Respondent's decision contained in the letter dated 9th May,2024 and/or action are oppressive, discriminatory, biased, without basis and should not be allowed to stand as they are an affront to the Law; that the decision of the 3rd Respondent is without any justifiable ground in law and in total contravention of the petitioners' rights protected by *the Constitution* of Kenya, 2010 and should be removed into this Honourable court and quashed Exdebito Justiciae; and in lieu thereof, there be an order directing the Respondents their agents, servants, officers and/or employees to immediately and unconditionally issue the Petitioners with the Business licences for the year 2024 subject to the payment of the requisite application fees and that this Honourable court has jurisdiction to hear and determine this petition.
16. The Petition is supported by affidavits of the Petitioners restating the grounds of the application.

Response to Petition

17. In opposing the Petition, the Respondents filed a replying affidavit sworn by Geoffrey Kimaiyo the Chairman of the 1st Respondent and have authority of the 1st, 2nd, 3rd and 4th Respondents to swear this affidavit. He avers that both the Notice of Motion Application and Petition are premature, misconceived and an abuse of the Honourable Court process.
18. That the Baringo County Alcoholic Drinks Act 2014 gives the 4th Respondent the mandate to issue license to anyone who wishes to produce, sell, distribute or deal with any alcoholic drinks within Baringo County and a Notice was issued to the members of the general Public and all stakeholders inviting Applications from interested persons for Alcoholic Drinks Licenses for the year 2024.
19. That after receiving the Applications Public participation was conducted on 18th March,2024 at the Kabarnet, Public Park in which the following resolution was made: -
 - a. Bars, wines and spirits should not be situated within three hundred metres (300) from learning institutions of pupils.
 - b. Second generation alcohol should be banned within Kabarnet Mosop Location.
 - c. Enforcement of Laws and regulation binding alcohol should be adhered to in regards to time, place, venue and age of consumers
 - d. The County government should revoke license of bars, wines and spirits who do not adhere to the rules.
20. That on diverse dates between the months of December, 2023 and January, 2024, a total of Forty-Four (44) liquor outlets applied for licenses in accordance with Section 11 of the Baringo County Alcoholic Drinks Act 2014 and in discharging its mandate as dictated by said Act, the 4th Respondent carried out inspection of the said outlets in the presence of the owners' agents and based on the inspection, a vetting report was thereafter prepared with recommendations on whether or not to grant or deny licenses to the individual Applicants with licence and decisions of the 4th Respondent was communicated by its secretary to both the successful and unsuccessful candidates.



21. That the 2024 licences of the Applicants/Petitioners and other candidates licences were not renewed due to non-compliance with requirements as stipulated by the Baringo County Alcoholic Drinks Act 2014. That year 2024 liquor licences were not issued to the 1st, 2nd and 4th Petitioners because, inter alia, they applied for sale of wines and spirits in wholesale yet the sales were done in retail which is in contravention of the Baringo County Alcoholic Drinks Act 2014. The committee also received written objections from the 1st, 2nd, and 4th Petitioners' Landlord wherein they stated that they do not approve the businesses to be carried out on their premises.
22. That the 2024 liquor license was not issued to the 3rd Petitioner because it applied for sale of wines and spirits in wholesale but the 4th Respondent established that that the sales were done in retail and was close to a learning institution namely Hurth School contrary to the Baringo County Alcoholic Drinks Act 2014.
23. That the 2024 liquor license was not issued to the 5th and 6th Petitioners because it applied for sale of wines and spirits in wholesale yet the sales were done in retail which is in contravention of the Baringo County Alcoholic Drinks Act 2014.
24. That the 2024 license was not issued to the 7th Petitioner because, inter alia, it had an access door from the direction of a learning institution namely Hurth School contrary to Baringo County Alcoholic Drinks Act 2014 and the general condition of the premises was not in conformity with the public health minimum requirements and it had no fire assembly point.
25. He further avers that both the Notice of Motion Application and Petition are premature as the Petitioners/Applicants have not exhausted the available Dispute Resolution Mechanisms as provided under the Baringo County Alcoholic Drinks Act 2014. Further, a party who moves the court seeking the orders sought by the Petitioners/Applicants herein must show to the satisfaction of the Court that his or her rights are under threat of violation; are being violated or will be violated and such violation or threatened violation is likely to continue unless the sought orders are granted.
26. Further, the Petitioners/Applicants herein allege that that their Constitutional rights have been violated yet they do not specify and demonstrate with reasonable particularity how their constitutional rights have been violated.
27. Further, that the Petitioner's/Applicant's liquor business premises contravened the rights of the consumers under Article 46 of *the constitution* specifically vulnerable children under Article 57(d) of *the constitution* and persons below 18 years from abuse and the general members of the public and the measures taken by the 4th Respondent were meant to safeguard the interests of the members of the public, public institutions including bus stage and churches and vulnerable children who could access alcohol from the Petitioner's/Applicant's business premises.
28. That public interest supersedes private interest and the Petitioners'/Applicants' interest must be weighed against the safety and interest of the general public and the interest of the members of the public will be highly prejudiced if the orders sought are granted.
29. In conclusion, the Respondents aver that the Petitioner's/Applicants have breached *the Constitution* of Kenya 2010, the *Public Health Act* and Baringo County Alcoholic Drinks Act 2014 and allowing them the businesses to continue will be allowing them to benefit from an illegality and urged this Court to dismiss the Petition with costs.
30. This Petition be canvassed by way of written submissions.



Petitioners Submissions

31. The petitioners filed their submissions and frames the following as the issues for determination by this honourable court as follows:-
- i. Whether due procedure was followed as per Article 47 of *the Constitution* of Kenya 2010 before terminating the petitioners' businesses.
 - ii. Whether the respondent contravened the provisions of section 11 and 12 of the Baringo county *Alcoholic Drinks Control Act* 2014 on refusal to grant the petitioners their business licences for the year 2024.
 - iii. Whether the alleged public participation meeting met the statutory requirements and the requirements of article 10 of *the constitution* of Kenya 2010, section 87 to 92 of the County Government Act 2012 on Citizen Participation, and section 9 (3) of the Baringo County *Alcoholic Drinks Control Act* 2014 on public participation.
 - iv. Whether the alleged inspection carried out met the requirements of *the constitution* of Kenya 2010 and the Baringo County *Alcoholic Drinks Control Act* 2014.
 - v. Whether the findings of the alleged inspection wanted the termination of the petitioners' businesses.
 - vi. Whether due procedure was followed as per Article 47 of *the Constitution* of Kenya 2010 before terminating the petitioners' businesses.
32. The petitioners argue that the respondents failed to follow due procedure before terminating their businesses vide the notice dated 9th May,2024 which was a gross violation of the petitioners' rights as enshrined in Article 47 of *the Constitution* of Kenya 2010. That Article 47 of *the constitution* of Kenya 2010 is a constitutional control over administrative bodies to ensure that they do not abuse their power and that individuals concerned receive fair treatment when actions are taken against them.
33. That failure to observe this constitutional decree, for all intent and purposes, undermines the rule of law and the value of Article 19(1) of *the Constitution* which states that the Bill of Rights is an integral part of Kenya's democratic state as the framework for social, economic and cultural policies.
34. They submit that the said notice dated 9th May,2024 indicated unknown reasons for the decision to terminate the petitioners' businesses as the respondents only indicated that the petitioners had not met statutory requirements but the said statutory requirements allegedly not complied with were not specifically stated.
35. They argue that the petitioners were not given any fair hearing to respond to reasons for closure if any and the closure notice of Seven (7) days was also not sufficient taking into account that the petitioners have all along been operating their respective businesses which include but are not limited to perishable stock notwithstanding the huge investment made by each of them in their respective business contrary to provisions of article 47 of *the Constitution* of Kenya 2010.
36. Further that the respondents' reasons in the said notice of closure are illegal as they have not been brought to their attention and were condemned unheard contrary to the rules of natural justice as well as the constitutional rights thus the respondents failed to follow due procedure before terminating the petitioners' businesses hence their notice dated 9th May,2024 is null and void.



37. In respect to Article 47 of *the constitution*, the petitioners relied on the decision of the Court of Appeal in the case of *Judicial Service Commission v Mbalu Mutava & another* [2014 eKLR and in *Erick Okango Omogeni vs. Independent Electoral Boundary Commission & 2 Others, Nairobi H.C Misc Civil App No. 40 of 2013* where the court held that where a person is not granted an opportunity to be heard, it cannot be said the process was fair.
38. On whether the respondent contravened the provisions of section 11 and 12 of the Baringo county *Alcoholic Drinks Control Act* 2014 on refusal to grant the petitioners their business licences for the year 2014, the petitioners submit that the procedure for granting of a business licence in this case is provided for under section 11 to 12 of the Baringo County *Alcoholic Drinks Control Act* 2014 and the petitioners complied with section 11 (1) by filing the necessary forms and paid the necessary fee for renewal of the business licences for the year 2024 but the Respondent failed to execute their mandate as per section 11 (3) of the Baringo County *Alcoholic Drinks Control Act* 2014 specifically by failing to renew the petitioner's licences for the year 2024 and if petitioners had reasons to decline renewal of licence they ought to have complied with section 11 (5) to 12 of the Baringo County *Alcoholic Drinks Control Act* 2014.
39. Further under section 11 (6) of the Baringo County *Alcoholic Drinks Control Act* 2014, if at all the respondent received any objections regarding the petitioners' application for renewal of their licences, the respondents ought to have formed a committee to hear the objections, set a date for hearing of such objections, and served the objections upon the applicants within seven (7) days before the hearing of the objections and onus upon the objector to prove his allegations.
40. And section 12 (1) of the Baringo County *Alcoholic Drinks Control Act* 2014 mandates the respondent to indicate in writing whether they objected to granting of the licences applied for by the petitioners and if the respondents objected to granting of such licences and under section 12 (4) (a) to write to the petitioners giving reasons for refusing to renew the licences.
41. The Petitioners submit that the respondents neither convened any hearing nor invited the petitioners to defend themselves against the objections raised (if any). and in view of the above, the respondents blatantly violated the petitioners right to a fair hearing as provided for in section 11 and 12 of the Baringo County *Alcoholic Drinks Control Act* 2014 and Article 50 of *the Constitution* of Kenya 2010; and respondents failure to follow due procedure as per the Baringo County *Alcoholic Drinks Control Act* 2014 and as per Article 47 and 50 of *the Constitution* of Kenya 2010 before terminating the petitioners' businesses warrants an order quashing the respondent's decision to terminate the petitioners businesses.
42. On whether the alleged public participation met the statutory requirements and the requirements of article 10 of *the Constitution* of Kenya 2010, section 87 to 92 of the County Government Act 2012 on Citizen Participation, and section 9 (3) of the Baringo County *Alcoholic Drinks Control Act* 2014 on public participation the petitioner submit that they were not involved in the alleged public participation alluded to by the respondents.
43. That Section 9 (3) of the Baringo County *Alcoholic Drinks Control Act* 2012 mandates the respondents to ensure that there is effective public participation in accordance with the framework for citizen participation provided for under the County Government Act and Section 87 through to 92 of the County Government Act 2012 provides for public participation of citizens but the petitioners were not served with letters or notices inviting them to attend the alleged public participation meeting neither were they served with objections and any notices of the agendas to be discussed in the public participation meeting contrary to Article 10 of *the Constitution* of Kenya 2010, section 9 (3) of the Baringo County *Alcoholic Drinks Control Act* 2012 and section 87 (a) and (b) of County Government



Act 2012. They placed reliance on the case of *Meru Bar, Wines and Spirits Owners Self Group v. County Government of Meru* [2014] eKLR, and *Nairobi Metropolitan PSV Saccos Union Limited & 24 Others v. County of Nairobi Government & 3 Others* [2013] eKLR.

44. Further that having a closer look at the public participation meeting alluded to by the respondent in the annexure marked as "GK2", the petitioners were not represented and the agenda of the meeting being "wines and spirits" and submit that the respondents ought to have personally invited the petitioners to the meeting the petitioners being key stakeholders and would directly be affected by decisions made and relied on the case of *Richard Owuor & 2 others (Suing on behalf of Busia Sugarcane Importers Association versus Cabinet Secretary, Ministry of Agriculture Livestock, Fisheries and Cooperatives & 8 others* [2020] eKLR.
45. In view of the above, the petitioners urged this court make a declaration that the respondents failed to involve the petitioners in public participation contrary to Article 10 of *the Constitution* of Kenya 2010, section 9 (3) of the Baringo County *Alcoholic Drinks Control Act* 2012 and section 87 (a) and (b) of County Government Act 2012 and relied on the case of *Mugo & 14 others v Matiang'i & another; Independent Electoral and Boundary Commission of Kenya & 19 others (Interested Party) (Constitutional Petition 4 of 2019)* [2022] KEHC 158 (KLR) (12 January 2022) where the court made an order quashing the respondents' decision as it was made without Constitutional principles of public participation and inclusiveness.
46. On whether the alleged inspection carried out met the requirements of *the constitution* of Kenya 2010 and the Baringo County *Alcoholic Drinks Control Act* 2014, they restated averments above.
47. On whether the findings of the alleged inspection warranted the respondents' action to terminate the petitioners' businesses, they submit that the findings of the alleged inspection did not warrant the respondents' action to terminate the petitioner's businesses for the following reasons;
 - a. As per the respondents' inspection checklists marked as "GK6", it is clear that the petitioners fully complied with the health and physical planning standards as per the Baringo County *Alcoholic Drinks Control Act* 2012. That it is quite ironic that the respondents would conclude (at the bottom of the checklists) that the petitioners were not approved for renewal of business permits having already indicated that the petitioners fully complied with the statutory requirements.
 - b. The respondents' minutes for 26th March, 2024 marked as "GK4" contains the inspection report wherein it is indicated that the petitioners did not qualify for renewal. The report/ findings are based on allegations of non-compliance with the Baringo County *Alcoholic Drinks Control Act*. That it is not clear who made these allegations as the same were not put down in writing therefore the petitioners and the court do not have the benefit of verifying that such allegations were ever made.
 - c. That on the flipside, going by the said report, it is clear that none of the petitioners were denied renewal of licence due to being in close proximity to any learning institutions. That the individual whose businesses are near leaning institutions are not parties in this petition.
 - d. That further, the alleged reports do not indicate if the 7th respondent's premises was ever inspected.
 - e. That in the minutes dated 3rd May, 2024, there were no documents/evidence attached to prove that the allegations contained therein were true. There was nothing attached to show that the petitioners operated their businesses beyond hours, or that they used their permits for purposes not intended.



- f. That in the minutes dated 3rd May,2024, it was recommended that the affected applicants would be given a chance to address the concerns raised within fourteen (14) days but going by the evidence on record the same was obviously not done. Ironically the same report concluded by making a decision for closure of the petitioners' business premises without caring to hear what the petitioners had to say about the allegations levelled against them which is a clear and blatant violation of Article 47 and 50 of *the constitution* of Kenya 2010.
- g. That the allegations that the petitioners' landlords complained about the nature of business of the petitioners were unfounded. They argue that the respondents have not presented before court any evidence to show that the landlords ever wrote to the petitioners to complain about the petitioners' businesses and the said landlords have clearly been manipulated/influenced by the respondents' arbitrary decisions as outlined above.
48. They urge this honourable court to note that the reports contained in the minutes dated 26th March,2024 and 3rd May,2024 both contain unfounded grounds for termination of the petitioners' businesses and only seeks to suggest that the respondent's want this honourable court to make a decision based on speculation.
49. That as per the minutes of 26th March,2024 and 3rd May,2024, the petitioners are not among the applicants whose premises were found to be near learning institutions and the respondents have failed to provide any evidence to prove that some of the petitioners were running retail businesses instead of wholesale businesses as alleged.
50. That the respondent clearly acted upon such unfounded claims thus occasioning prejudice and losses upon the petitioners. That it goes without saying that the respondents did not have a basis for terminating the petitioners' businesses and have ultimately failed to justify their arbitrary actions and consequently, the notice dated 9th May,2024 issued to the petitioners to terminate their business is null and void.
51. That the petitioners having already demonstrated that their right to public participation, right to a fair hearing and right to a fair administrative action were grossly violated contrary to the Article 47 and 50 of *the Constitution* of Kenya 2010 and the Baringo County *Alcoholic Drinks Control Act* 2012, it was upon the respondents to justify their interference with the petitioners' said rights and relied on the case of Muriungi Kanoru Jeremiah vs Stephen Ungu M'mwarabua [2015] eKLR.
52. That going by the respondents' replying affidavit dated 14th June,2024 and the annexures thereof, it goes without saying that the respondents acted arbitrary and unfairly in total disregard of the petitioners' rights as enshrined in *the constitution* and this court is justified to interfere with the respondents' decision to terminate the petitioners businesses and substitute it with the orders sought herein and relied on the case of Muigana & 16 others *v County Government of Nyandarua (Petition E007 of 2023)* [2024] KEHC 960 (KLR) (8 February 2024) (Judgment) and in Republic V Baringo County Government and another; Stephen K. Cheptoo and 8 others (Ex-Parte Applicants) (2018)EKLR.

Respondents Submissions

53. The Respondents on their part submit and frame the following as issues for determination.
- a. Whether the Petitioners' Constitutional rights have been infringed.
 - b. Whether the Respondents' decision was lawful.



- c. Whether the Petitioners exhausted all the Dispute Resolution Mechanism before filing the instant Petition.
- d. Whether the Petitioners are entitled to the orders sought
54. On the first issue, the Respondents submit that the Petitioners have not specified nor demonstrated with reasonable particularity the constitutional rights that have been violated and relied on the celebrated case of Mumo Matemo versus Trusted Society Of Human Rights Alliance [2014] eKLR, in support of their argument.
55. That a party who approaches the Court for enforcement of fundamental rights and freedoms of *the Constitution* must state his claim with some measure of precision in respect of the right allegedly violated and must demonstrate how the right has been violated in relation to him or another person and the jurisdictional basis for it and failure to do so goes against the principles of law set out in the above case.
56. On whether the respondents' decision was lawful, they submit that the Baringo County *Alcoholic Drinks Control Act* establishes the Sub-County Alcoholic Drinks Committee and the said Act provides for Application for license in Section 11.
57. That in performing the functions as stipulated under Section 9 of the Baringo County Alcoholic Drinks Act, the Committee issued a Notice to the members of the general Public and all stakeholders inviting Applications from interested persons for Alcoholic Drinks Licenses for the year 2024 and restated averments in the replying affidavit.
58. They submit that it is not disputed that the 1st, 2nd, 3rd, 4th, 5th and 6th Petitioners applied for licenses to sell wines and spirits in wholesale yet the sales were done in retail. It is the Respondent's position that the said Petitioners were operating without a requisite license, an act which is a contravention of the Baringo County Alcoholic Drinks Act 2014 and that aside, they received written objections from the landlords of 1st, 2nd, and 4th Petitioners' Landlords objecting to businesses to be carried out on their premises. Further the 3rd and 7th Petitioner not only operated without the requisite licences but their business premises were close to a learning institution namely Hurth School, contrary to the Baringo County Alcoholic Drinks Act 2014; and the 7th Petitioner had an access door from the direction of the learning institution contrary to Baringo County Alcoholic Drinks Act 2014 and the general condition of the premises was not in conformity with the public health minimum requirements and it had no fire assembly point.
59. They submit that the Petitioners should not be heard to say that there was no public participation yet the landlord of the premises where some of them carry out their business raised objections to them being granted the licences and it is important to note that the 4th Respondent made a decision which was communicated by its secretary, to both the successful and unsuccessful candidates by letters dated 9th and 10th May, 2024 giving reasons for the said decision.
60. Further that Section 3 of Baringo County Alcoholic Drinks Act provides that the objective and purpose of the Act is to provide for licensing of alcoholic drinks by the County Government pursuant to Part 11 of the Fourth Schedule to *the Constitution* so as to control production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks.
61. In conclusion, the Respondents submit that there is no doubt that the Petitioners contravened the Baringo County Alcoholic Drinks Act and *the Constitution* of Kenya, 2010, and issuing them a licence would be perpetuating an illegality; that the Respondents acted in compliance with the Act and



the Constitution of Kenya 2024. They relied on the case of Republic Versus National Commission On Human Rights Ex-Parte Uburu Muigai Kenvatta Misc Civil Appeal No 86 OF 2009, [20 10] eKLR.

62. Further that refusal to issue 2024 licenses to the Petitioners was made with full participation of the stakeholders and the members of the public in compliance with Article 10 and 196 of the Constitution of Kenya 2010 and the grant of prayers sought shall highly prejudice the interests of the members of the Public and the vulnerable members of the society.
63. On whether the petitioners exhausted the dispute resolution mechanism before filing the petition, they submit that the Respondents are alive to the fact that the Constitution of Kenya of Kenya 2010 provides for the Right to Fair Administrative Action under Article 47 and Section 90 of the Fair Administrative Action Act provides for the Doctrine of Exhaustion and if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. That the Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary
64. The respondents submit that Section 17 of the Baringo County Alcoholic Drinks Act 2014 provides for review to County Review Committee by a party whose licence has been refused or cancelled within fourteen days of such refusal and the Petitioners had the opportunity to be heard but chose not to utilize and have therefore failed to exhaust internal mechanism by appealing the decision to Review Board before filing this Petition.

Analysis and Determination

65. I have considered arguments by parties herein. The petitioners sought renewal of year 2024 licences and were declined on grounds captured under paragraph 58 above in respect to each petitioner herein. The petitioners argue that the reasons for refusal to renew were not communicated and further there was no public participation and they were not granted an opportunity to be heard.
66. The respondents on the other hand argue that Petitioners/applicants herein and all stakeholders and the general members of the public were granted an ample notice and opportunity to participate and raise their concerns before taking any administrative action and the intention of the County Alcoholic Drinks Control Act was to protect consumers under Article 46 of the Constitution.
67. Record show that objections were raised on operation of business by the petitioners which include from their landlords. And having considered arguments by all the parties herein and the provisions of law cited, there is no doubt that public interest should prevail over any private interests of the Petitioners/Applicants as was held in Republic -vs-National commission on Human rights Ex-parte Uburu Muigai Kenvatta Misc Civil appeal no 86 of 2009, [2010] eKLR.
68. In view of the above, I find that the petitioners failed to demonstrate that reasons for declining of renewal of licence were not communicate neither have they demonstrated that they were not giving opportunity to be heard.
69. Further, the Respondents submitted that the petitioners failed to exhaust internal dispute resolution mechanism of the Baringo County Alcoholic Drinks Control Act, 2014. Section 9 of the Fair Administrative Action Act, 2015 provides as follows:

“9.

- (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court



or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*.

- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
- (5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”

70. Sections 17, 18 and 19 of the Baringo County *Alcoholic Drinks Control Act* 2014 provides for the mechanism of resolution of disputes through review, application and appeal as follows:

“ 17.

- (1) An applicant whose application for a new licence, to renew or transfer a licence has been refused or cancelled may within fourteen days of such refusal, request in writing the review of such refusal to the [sub]-County Review 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 the review of such decision.
- (3) Upon receipt of a request under this section, the County Review Committee shall notify the Sub-County Committee of the pending review.
- (4) The County Review Committee shall within twenty-one days consider and make a final determination on the request for review.
- (5) The County Review Committee may-
 - (a) dismiss the request for review in its opinion, the request is frivolous or vexatious;
 - (b) uphold the decision of the Sub-County committee;
 - (c) annul the decision of the sub-County committee



- (d) give directions to the sub-County committee with respect to any action to be taken;
 - (e) make any other declaration as it may deem fit.
- (6) Notwithstanding section 17, an applicant whose application for a new licence, to renew or transfer a licence has been refused may within twenty-one days of such refusal appeal against such refusal to Court.
- (7) An applicant under section 17 who is not satisfied with the decision of the County Review Committee may within twenty-one days appeal to the High Court.”

71. In the Speaker of the National Assembly v. James Njenga Karume [1992] eKLR, (2008) 1 KLR (EP) 428, it is established as a constitutional principle that-

“Where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”

72. Record show that the petitioners failed exhaust internal dispute resolution mechanism neither have they sought leave of court for exemption from the requirement to exhaust the statutory mechanism under section 9(4) of the *Fair Administrative Action Act*. In view of the above, the Petitioner’s suit is incompetent and I proceed to strike it out.

73. Final orders: -

- 1. This petition is dismissed.
- 2. No orders as to costs.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 14TH DAY OF NOVEMBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

- * Elvis, Court Assistant.
- * Mr. Otieno Mudany for Respondent.
- * Ms. Nyabuto for Petitioner.

