



**Republic v County Government of Nandi & 3 others; Namakkhuli t/ a Bavillion Bar and Restaurant (Exparte Applicant) (Judicial Review E002 of 2024) [2024] KEHC 14061 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14061 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
JUDICIAL REVIEW E002 OF 2024  
JR KARANJA, J  
NOVEMBER 12, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF NANDI ..... 1<sup>ST</sup> RESPONDENT  
NANDI COUNTY ALCOHOLIC DRINKS CONTROL REGULATION  
ADMINISTRATIVE REVIEW COMMITTEE ..... 2<sup>ND</sup> RESPONDENT  
THE DIRECTORATE OF ALCOHOL DRINKS CONTROL .. 3<sup>RD</sup> RESPONDENT  
ALDAI SUB-COUNTY ALCOHOLIC REGULATIONS COMMITTEE .... 4<sup>TH</sup>  
RESPONDENT**

**AND**

**ANN NAMAKKHULI T/A BAVILLION BAR AND RESTAURANT .... EXPARTE  
APPLICANT**

**RULING**

1. The Notice of Motion dated 20<sup>th</sup> June 2024 is described as a judicial Review application brought as such pursuant to the Notice dated 12<sup>th</sup> June 2024 issued under Order 53 [1][3] of the Civil Procedure Rules and the leave granted by this court on 14<sup>th</sup> June 2024 while granting prayer [a] of the chamber summons dated 12<sup>th</sup> June 2024 filed herein by the Applicant, Ann Namakhuli Trading as Bavillion Bar & Restaurant.
2. Thus, the Applicant was granted leave to file these Judicial Review proceedings for purposes of quashing the decision of the Nandi County Alcoholic Drinks Control Regulation Administrative Review Committee (First Respondent] by way of an order of certiorari. A further order of Prohibition



was sought against all the four Respondents to prohibit them from taking steps, actions and means to enforce the decision contained in the Ruling dated 3<sup>rd</sup> June 2024.

3. The application is however, said to be brought under Articles 10, 23[3] and 47 of *the Constitution* and Section 7 of the Fair Administration Actions Act, 2015 on top of Order 51 Rule [1] of the Civil Procedure Rules and is based on grounds stated on the affidavit verifying the statement of facts dated 12<sup>th</sup> June 2024 and indeed, the statement of facts dated 12<sup>th</sup> June 2024.
4. As framed, the application for all intents and purposes, smacks of a Judicial Review application made essentially under the provisions of Order 53 of the Civil Procedure Rules even though Articles 10, 23[3] and 47 of *the Constitution* are also invoked by the Applicant.
5. The orders sought against the Respondents are as follows: -
  - i. That, the decision of the Nandi County Alcoholic Drinks Control Regulation Administrative Review Committee be quashed.
  - ii. That, the process followed by the committee on arriving at the ruling delivered on 3<sup>rd</sup> June 2024 be reviewed with a view of quashing the same.
  - iii. That, an order of certiorari do issue to remove to this court and quash the order and decision of the Nandi County Alcoholic Drinks Control Regulation Administrative Review Committee denying the ex-parte applicant a licence.
  - iv. That an order of prohibition do issue prohibiting the Respondents either by themselves, their servants, employees, officers and/or any person acting under their directive and control from taking steps, actions, and measures to enforce its decision contained in the ruling dated 3<sup>rd</sup> June 2024.
6. In a nutshell, the Applicant is seeking Judicial Review orders of certiorari and Prohibition against the Respondents based on their decision through the Second Respondent made on 3<sup>rd</sup> June 2024 to deny the Applicant the licence to conduct her business in the name and style of Barillion Bar and Restaurant. The grant of such order would normally fall within the Statutory jurisdiction of this court as well as Constitutional jurisdiction.
7. The Statutory jurisdiction would be that donated under Order 53 of the Civil Procedure Rules and the provisions of the Fair Administrative Actions Act 2015, while the Constitutional Jurisdiction would be that donated through Articles 23 and 47 of *the Constitution*.  
The *Fair Administrative Action Act*, 2015, was enacted pursuant to Article 47 of *the Constitution*.
8. The question here is whether this application is proper and competent before this court given that the Applicant has invoked both statutory and constitutional provisions in it. Is the application a judicial review application under Order 53 of the Civil Procedure Rules or a Constitutional Petition under Article 47 of *the Constitution*?
9. The parameters of judicial review were set out by the Court of Appeal in *Municipal Council of Mombasa Vs. Republic & Umoja Consultants Limited* [2002] eKLR, where it was stated that:-

“Judicial Review is concerned with the decision making process, not with the merits of the decision itself; the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account relevant matters or did take into account irrelevant matters. The court should not act as



a Court of Appeal over the decider which would involve going into the merits of the decision itself-such, as whether there was or there was not sufficient evidence to support the decision.”

10. The remedy of Judicial Review under Order 53 Civil Procedure Rules is intended to protect an individual from abuse of power and see that the relevant public authorities use their powers in a proper manner. It is not intended to take away from such authorities the powers and discretions property vested in them [see, Chief Constable Vs. Evan [1982] 3ALLER 141].
11. As was held in Republic Vs. Kenya Revenue Authority Ex-parte Yaya Towers Limited [2008] eKLR, “It is important to remember in every case that the purpose of the remedy of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the Judiciary or of the individual judge for that of the authority constituted by law to decide the matter in question. Unless, that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself guilty of usurpation of power.”
12. In a broad sense, the purpose of judicial review is to ensure that a person is given fair treatment by the public body or authority to which he/she has been subjected. It provides the means by which judicial control of administrative action is exercised under three heads: -
  1. Illegality, where the decision making authority has been guilty of error of law e.g. by purporting to exercise a power it does not possess.
  2. Irrationality, where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision;
  3. Procedural impropriety, where the decision making authority has failed in it’s duty to act fairly.
13. This present application does not allude to any of the aforementioned elements of judicial review. Instead, it questions the evidence relied upon by the Respondents in arriving at the decision that impacted on the Applicant’s business. There is no definite complaint that there was procedural impropriety in arriving at the decision. Apparently, the Applicant seems to suggest that the decision of the Respondents impacted on her fundamental rights, in which case she ought to have filed a constitutional petition pursuant to Article 22[1] of *the Constitution*.
14. The Article provides that: -

“Every person has the right to institute court proceedings claiming that a right on fundamental freedom in the Bill of Rights has been denied violated or infringed or is threatened.”

This provision provides the foundation for judicial review orders under *the Constitution*, in particular, Articles 23 and 47 which are invoked herein by the Applicant yet this is a matter which is essentially justiciable under the Judicial Review Jurisdiction rather than the constitutional jurisdiction which would invariably interrogate the merits of the decision complained of.
15. This application in the manner it is contextualized questions not the decision making process, but the merits of the decision in which case it is misconceived, improper and incompetent for purposes of judicial review. It is also an abuse of the process of the court in as much as it purports to invoke both the statutory and constitutional jurisdictions of this court to grant judicial review orders.



16. The privy council in the case of *Khemray Harrikison Vs. Attorney General of Trinidad and Tobago* [1979] 31 WIR 348, considered the scope for judicial intervention when the human rights issue is raised and sounded a caution as to the demarcation between normal cases of judicial review for breaches of law by public agencies, on the one hand, and the special protection for human rights and fundamental freedoms, on the other hand. In so doing, the privy council through Lord Diplock, expressed itself as follows: -

17. “The notion that whether there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human rights or fundamental freedom guaranteed to individuals by Chapter 1 of *the Constitution* is fallacious. The right to apply to the High Court under Section 6 of *the Constitution* for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of the rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedure for invoking judicial control of administrative action.

In an originating application to the High Court under Section 6[1], the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to enable the Applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely, for the purposes of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves contravention of any human right or fundamental freedom.”

18. It is without doubt that the circumstances of this case are deeply ensnared hook, line and sinker by the foregoing legal principles enunciated by the Privy Council in the case aforementioned.

In sum, this application is clearly not proper and competent before this court and is a gross abuse of the court process. It is accordingly ordered that: -

1. The Notice of Motion dated 20<sup>th</sup> June 2024 be and hereby dismissed.
2. The Respondents be and are hereby entitled to the costs of the application against the Applicant.

**DELIVERED AND DATED THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2024**

**J. R. KARANJAH,  
JUDGE**

