



Olkalou Sub-County Bar Owners Selfhelp Group & 4 others v County Government of Nyandarua & another (Petition E015 of 2024) [2024] KEHC 15679 (KLR) (10 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
PETITION E015 OF 2024
CM KARIUKI, J
DECEMBER 10, 2024**

BETWEEN

OLKALOU SUB-COUNTY BAR OWNERS SELFHELP GROUP & 4 OTHERS & 4 OTHERS & 4 OTHERS PETITIONER

AND

COUNTY GOVERNMENT OF NYANDARUA & ANOTHER RESPONDENT

RULING

1. The petitioners/applicants lodged a petition dated 28.11.2024 and motion dated on even dated seeking declaratory and injunctive reliefs under a certificate of urgency. After the matter was argued on 5.12.2024, the court issued interim orders to preserve the status quo awaiting the ruling slotted on 10.12.2024. Stephen Mbugua Mwea swore the petitioners' affidavit, while Agnes Njuji swore for the respondents' side a replying affidavit.
2. The Parties' advocates canvassed the application via verbal submissions heavily relying on their affidavits and the pleadings on record and also with their affidavits on record.

Petitioner Case

4. The petitioners' case, in brief, is that they are traders in the business of buying and selling alcoholic drinks within Nyandarua County.
5. On 14.5.2024, 1st-Respondent issued notice for the application of the licenses for the year 2024 through a newspaper advertisement dated on even date. The applicant complied by applying for the same licenses.
6. On 19.11.2024, another notice was issued for those who had not applied for the liquor license in line with the 14.5.2024 notice to do so, this time with the deadline being fixed to be 27.11.2024.



7. After that, a text message was sent by the respondents notifying recipients to do immediate payment of the licenses for the renewal of the said licenses on or before 03.12.2024.
8. This attracted instant suit on the basis that the Nyandarua County Alcoholic Drinks Act 2024 and regulations thereof regulate trading on alcoholic drinks through sub-county committees and county management committees and also the issuance of the licenses.
9. That the Act and the said regulations, stipulate that, the sub-county committee shall issue 21 days' notice after submission of the applications for the licenses applied to prepare a notice setting forth the names of applicants, types of licenses applied for the premises in respect of which licenses are applied for, the date and place of meeting and shall forthwith cause a copy of the notice to be published at the places of Deputy county commissioner (DCC) and sub-county administrators for a period of not less than 21 consecutive days and posted at conspicuous place at or the applicants premises.
10. The applicants aver that, as a prerequisite to payments of the licenses, sections 18 and 19 of the Act 2024 require inspection and vetting to be conducted of the applicant premises. Thus, the demand for the payments for the licenses is contrary to the said provisions of the law and also unfair as inspection and vetting have not been conducted.
11. The reason for the aforesaid complaint is that should vetting and inspection ensue thereafter, and one fails to pass the test of the inspection and the vetting, the applicant would have business closed, lose money paid, and suffer loss and damage.
12. Thus, the applicants submit that the grant of the injunctions sought is justified on that premises.

Respondent Case

14. The respondents, in reply via the replying affidavit of Agnes Njuji, the CEC responsible for the alcoholic trade control in the county, posited that it is not contested as to the content of provisions of sections 18 and 19 of the said Act 2024 and the contents of the notices issued by the Respondents.
15. However, as for notice of 14.5 2024, no licenses were issued as licensing committees had not been constituted as Respondent no 1 awaited the vetting and approval by the county assembly. After approval of said committees on 7.11.2024, another advertisement was issued on 19.11.2024 so that those who had not applied on 14.5.2024 could apply also.
16. The committee notified those who applied on 14.5.2024 to make payments for the licenses. At the same time, the applicants, on the basis of the 19.11.2024 notice, were being processed, and the outcome was communicated that the committee was processing the applications to ensure compliance with the law given the limited time frame before the end of the year.
17. The respondents were not declining or denying the issuance of a license to any applicant, and applicants were notified that all those who applied for the liquor license should start paying immediately.
18. The court is urged to take judicial notice that the traders of alcoholic drinks have operated the whole of 2024 without licenses; thus, only fair that they pay the taxes to stem crippling the Respondent no one (1) by continuing to operate without paying for the licenses.
19. It is worth noting that over 200 alcoholic drinks traders have paid for 2024 licenses, and more are doing so. The respondents have allowed all traders who pay their 2024 licenses to continue operating their businesses in the spirit of Act 2024 and the litigation cases in which parties consented to protect and promote businesses within the county.



Determination

20. Upon perusal of the pleadings, affidavits, and submissions tendered, I find the issue is whether the applicants have made a case for the grants of the reliefs sought. If the above is in negative, what are the appropriate orders in the circumstances, and what are the orders as to costs?
21. In the case of *Ochola Kamili Holdings Ltd v. Guardian Bank Ltd* [2018] eKLR, the court held thus: -

“The court is alive to the fact that interlocutory injunction, being an equitable remedy, would be discharged upon being shown the person's conduct with respect to the matter pertinent to the suit does not meet the approval of the court which granted the orders which is the subject matter and especially where a party upon getting injunction orders sits on the matter and uses the orders to the prejudice of the opponent. The orders of the injunction are meant to preserve the subject matter Not to oppress another party, nor should an injunction be used to oppress the other party economically or to deny justified repayment of the outstanding loan. Once such post-injunction behavior is exposed, it would, in my view, be grounds for discharging an injunction because the order obtained would be an abuse of the purpose for which the injunction was obtained. No court would allow its orders to be used to defeat the ends of justice”.
22. The criteria for granting an interim injunction include a serious question to be tried, the inadequacy of damages as a remedy, the balance of convenience favoring the applicant, and the consideration of whether the grant of an injunction would do more harm than good.
23. In the instant matter, the parties are in agreement that the provisions dealing with inspection and vetting of the premises have not been complied with. The court has noted that the affidavit filed on behalf of the respondents admits that there is no time for inspection and vetting as the year is ending, but those who have been operating business owe the Respondent no one (1) payments for 2024 licenses.
24. Thus, the issue of inspection and vetting has been apparently waived; the issuance of the license to all the applicants who pay for the same is obtainable. Thus, it is this court finding that could prove existing of a prime facie case is established. However, as to the loss and damage the applicant may suffer for not being granted an interim injunction, the respondents have countered that the inspection and vetting will have no time due to time left for the year to end. The state of affairs has been created by the litigation for which parties herein are responsible.
25. There is assurance that the businesses of those who pay for the licenses will continue to operate their business; thus, no loss or damage will arise against petitioners. The court makes a finding as much. In any event, the orders of the injunction are meant to preserve the subject matter, not to oppress another party, nor should an injunction be used to oppress the other party economically or to deny justified payment of dues like in the instant matter.
26. Thus, the court finds no merit in the instant application and, therefore, makes the orders;
 - i. The orders of injunctions sought cannot be issued to prevent Respondents, from realizing license fees in issue provided that the applicants will be issued with licenses upon payment of the requisite fees for the licenses applied for.
 - ii. The Applicants shall have seven (7) days from the dates herein to pay the licenses applied for; otherwise, the Respondents will be at liberty to continue enforcement of the applicable law.



- iii. The parties shall file and exchange submissions within 30 days, with petitioners having 15 days and respondents 15 days after that to file and serve same for directions and/or highlighting on 5.1.2025.
- iv. Costs are to be in the main cause.

RULING DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 10TH DAY OF DECEMBER 2024

**CHARLES KARIUKI
JUDGE**

