



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION NUMBER 25 OF 2017

IN THE MATTER OF ARTICLES 22, 23, 159 AND 165 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS UNDER

ARTICLES 27, 29, 31, 40, 47, 50, 73 AND 75 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE ALCOHOLIC DRINKS LICENSE FEES

COUNTY GOVERNMENT OF NAKURU FINANCE BILL 2016

BETWEEN

CHARLES WAMBUGU & 39 OTHERS.....PETITIONERS/APPLICANTS

VERSUS

COUNTY GOVERNMENT OF NAKURU.....RESPONDENT

JUDGEMENT

1. The Petition dated 14th July, 2017 was instituted by the Petitioners seeking the followings orders:

i. That conservatory orders be granted restraining the Respondents or any other public officer or public body from closing their business situate in Nakuru West within Nakuru County.

ii. That the Respondent be compelled to charge the Applicant as per the scale laid down in the Finance Bill October 2016.

2. The Petition dated 14th July, 2017 has not set out any grounds upon which it is brought. However, the Petitioners application for conservatory orders dated 14th July, 2017 set out the ground that:-

“i. That the Respondents are through its officers threatening to close down the Petitioners businesses which will cause the Petitioners to incur loss and damages and thus this Petition will be rendered nugatory.”

3. The petition was supported by the affidavit of Charles Wambugu dated 14th July, 2017. It was opposed by the Silvanus Jomo, the Revenue Officer in Nakuru West dated 4th September, 2017.

4. The petition was disposed of by way of written submissions. In the submissions dated 4th December, 2017, the Petitioners made reference to submissions dated 4th December, 2017 make reference to the supporting affidavit of one Simon Mutugi Ndirangu and opposed by one Edith Kimani which is not correct. The Respondent's submissions are dated 29th September, 2017.

5. The Petitioners argued that their liquor license fees had been illegally increased from Kshs. 30,000 to Kshs. 60,000 for the 2017 license. They argued that the increase was contrary to the Finance Bill 2016.

6. They averred that the Respondent had refused to issue them with 2017 licenses pending payment for the 2016 balance. They averred that the Respondent had orally threatened to close down their businesses by 9th June, 2017 unless the balance and for 2016 and Kshs. 60,000 for 2017 licenses had been settled. They argued that they stood to suffer loss and damages.

7. The Respondent submitted that the Petitioners had failed to state how their constitutional rights had been violated. They argued that the petition was unsubstantiated and unjustified amounting to abuse of the court process. They submitted that they are mandated under Article 209 and Schedule 4 part 2 of the Constitution of Kenya to raise revenue in order to deliver services to the people. It was the argument of the Respondents that the fees charged were fair and reasonable. The Respondent submitted that the bill had gone through public participation and had been enacted into law. They averred that the Petitioners failure to pay trade license fees or alcoholic drinks license fees deprived the Respondents the right to collect revenue.

8. The Respondent further submitted that the 4th, 8th, 13th, 14th, 19th, 20th, 36th, 37th and 38th Petitioners had not placed their documents before the court to support their claim and thus lacked locus. They also argued that the 7th and 16th Petitioners should be disregarded as they had no relevant documents. They urged court to dismiss the petition with costs.

9. I have considered the petition, affidavits in support of and against the petition and the submissions from both parties. As earlier stated, although the Petitioners' counsel stated in the submissions that the supporting affidavit was sworn by one Simon Mutugi Ndirangu, what is on record is a supporting affidavit sworn by one Charles Wambugu dated 14th July, 2017. He further stated that the replying affidavit was sworn by one Edith Kimani, what is on record is a replying affidavit sworn by Silvanus Jomo dated 4th September, 2017. The Petitioners' counsel also informed the court while highlighting his submissions that they were relying on their submissions filed in a related petition being **Constitutional Petition 20 of 2017**.

10. The only issue in this petition is whether the Petitioners' constitutional rights have been violated or contravened by the Respondent. A look at the petition shows that the Petitioners claim that the Respondent had increased the liquor license fees from Kshs. 30,000 to Kshs. 60,000 for the 2017 licenses contrary to the Finance Bill 2016. A careful consideration of the petition however does not show how the alleged increase in the liquor license fees has violated the constitutional rights of the Petitioners. Despite the Petitioners citing several Articles of the Constitution in the heading of the petition, none of the pleadings nor submissions have attempted to demonstrate how those rights were violated or have been violated. No argument has been made out in this petition to show that the Respondent was either not entitled to charge the liquor license fees nor to collect any outstanding fees.

11. In **A.K.M.M v E.M.K.K & 2 others [2014] eKLR** Majanja D., stated as follows:-

*“... Article 22 of the Constitution grants every person the right to move the High Court to enforce fundamental rights and freedoms contained in the Bill of Rights. These rights are very specific and a petitioner who comes before the court must set out with some level of particularity the specific right and how it is violated. This principle was established in the case of **Anarita Karimi Njeru v Republic (No. 1) [1979] 1 KLR 154** and augmented by the Court of Appeal recently in the case of **Mumo Matemu v Trusted Society of Human Rights Alliance Civil Appeal No. 290 of 2012 [2013] eKLR.**” (Emphasis mine)*

See also **Malawi Railways Ltd v Nyasulu (1998) MWSC3** and **Adetoun Oladeji (NIG) Ltd v Nigeria Breweries PLC S.C. 91/2002**.

12. The only argument that comes through the Petition as pleaded is that the Respondent charged liquor license fee which was not provided for in the Finance Bill 2016. As I have already found, the Petitioners failed to establish any constitutional violation. I have considered the claim of increased fees which as I have stated is not a constitutional issue. Unfortunately, the Petitioners have not provided any evidence to back up their claim.

13. In the premises, I find that the Petition dated 14th July, 2017 fails and is consequently dismissed with no orders to costs.

Orders accordingly.

Judgement signed

R.LAGAT KORIR

JUDGE

Judgment delivered, dated and signed at Nakuru

This 12th day of February, 2019

.....

JANET MULWA

JUDGE

In the presence of:

.....Court Clerk

.....For the Petitioners/Applicants

.....For the Respondents