



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

PETITION NO. 2 OF 2016

(Formerly High Court Nakuru Petition No. 5 of 2016)

IN THE MATTER OF ARTICLES 10, 19(2), 20(1), (2) (3) & (4), 21(1), 22, 23, 40, 47(1) & (2), 165(3) (B) (iii) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF AN ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT, 2015, ALCOHOLIC DRINKS CONTROL ACT NO. 4 OF 2010 & NYANDARUA COUNTY ALCOHOLIC DRINKS CONTROL ACT NO. 1 OF 2014

BETWEEN

OL'JORO-OROK BAR OWNERS SELF HELP GROUP

Suing through JACKSON MAINA MWANGI (Chairman)

JOHN WAMBUGU KINYUA (Secretary)

ROSE NJIHIA (Treasurer)

JAMES KARIUKI CHEGE (Committee Member).....PETITIONER

-VERSUS-

DEPUTY COUNTY COMMISSIONER,

NYANDARUA WEST SUB-COUNTY.....1ST RESPONDENT

OFFICER COMMANDING DIVISION,

NYANDARUA WEST POLICE DIVISION.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

COUNTY GOVERNMENT OF NYANDURUA.....INTERESTED PARTY

CONSOLIDATED WITH

PETITION NO. 4 OF 2016

IN THE MATTER OF ARTICLES 10, 19(2), 20(1), (2) (3) & (4), 21(1), 22, 23, 40, 47(1) & (2), 165(3) (B) (iii) OF THE CONSTITUTION OF KENYA, 2010

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IN THE MATTER OF AN ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS

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BETWEEN

NYANDARUA NORTH BAR OWNERS

WELFARE ASSOCIATION.....1ST
PETITIONER

SOUTH KINANGOP BAR OPERATORS

SELF HELP GROUP.....2ND PETITIONER

MAGUMU BAR OWNERS SELF HELP GROUP.....3RD PETITIONER

KIPIPIRI BAR OWNERS WELFARE SELF HELP GROUP.....4TH PETITIONER

KARAU ALCOHOL BUSINESS OPERATORS.....5TH PETITIONER

-VERSUS-

COUNTY COMMISSIONER, NYANDARUA.....1ST RESPONDENT

COUNTY POLICE COMMANDER, NYANDARUA.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

COUNTY GOVERNMENT OF NYANDURUA.....INTERESTED PARTY

J U D G M E N T

Introduction

1. Petitions Number 2 and 4 of 2016 are identical in many respects, though filed one month apart, albeit by the same advocates. **Petition No. 2 of 2016** was originally filed in the High Court at Nakuru on 22nd

February 2016 as Petition No. 5 of 2016, and was transferred to this court subsequently (and assigned its current number). The said Petition is brought by **Jackson Mwangi, John Wambugu Kinyua, Rose Njihia** and **James Kariuki Chege** in their capacity as the Chairman, Secretary, Treasurer and Committee member, respectively, of the **Ol Joro-orok Bar Owners Self Help Group**.

2. The Respondents are the Deputy County Commissioner Nyandarua West Sub-County, Officer Commanding Division Nyandarua West Police Division and the Honourable Attorney General (1st to 3rd Respondent respectively). The County Government of Nyandarua is joined as an Interested Party.

3. The Petitioners therein are seeking the following orders:-

“a)A declaration that the arbitrary closure of businesses, impounding of liquor, arrests and arraignment in court of members of the Petitioners in the pendency of determination of their applications for Liquor Licences is unconstitutional, null and void.

b)An order of injunction do issue restraining the Respondents from interfering with bar businesses of members of the Petitioners in the Pendency of determination of their applications for Liquor Licences by the Interested Party together with any appeals arising therefrom.

c)Costs of the Petition be provided for.”

4. The Petition is supported by the affidavit of the Committee member, **James Kariuki Chege**. From the Petition and Supporting affidavit, the Petitioner’s complaint is as follows. Its members consist of various bar operators in Nyandarua West Sub-County. That in March 2015, the said members submitted applications for liquor licences pursuant to the then newly enacted **Nyandarua County Alcoholic Drinks Control Act**. That, relying on assurances given, the members continued with their bar operations pending the determination of their respective application by the Interested Party.

5. That notwithstanding assurances given, effective 15th February, 2016 the 1st and 2nd Respondents ordered the Petitioner’s members to close down their businesses, impounded liquor in the premises and arrested employees. The said employees were arraigned in court *inter alia*, for the offence of Selling alcoholic drinks without a licence Contrary to Section 37 (1) of the Alcoholic Drinks Control Act, 2010. That the Respondents’ actions constitute a violation of the affected members’ legitimate expectations to equal protection of the law the right to own property (Article 40 of the Constitution) and to fair administrative action (Article 47 of the Constitution).

6. That the liquor licence application in respect of members of the Petitioners have been pending for a year, within which period the members were given a reasonable expectation that their operations would continue, and would not be disrupted without written notice, and a chance to be heard. Through the Attorney General, the Respondents filed Grounds of Opposition. The key grounds are that the Petitioner is relying on expired liquor licenses in seeking the court’s protection and that the grounds in the Petition do not disclose an infringement of any constitutional right by the Respondents. That the Petitioner is only out to intimidate the Respondents and further more the Petitioner’s members’ private interest should not outweigh public interest regarding regulation of alcohol businesses.

7. The Interested Party filed a Replying affidavit sworn by **William Mwangi Wambugu**, the secretary of the Nyandarua County Alcoholic Drinks Control Board. The contents of the affidavit primarily confirm that the members of the Petitioner did apply for liquor licences and made requisite payments. That the said Applicants **“were allowed to continue operating their businesses in the pendency of the determination”**, of the Sub-County Committee. He deponed that the process in respect of the evaluation of the applications is ongoing. That the Interested Party has not in any way disrupted or hindered the business operations of the said applicants.

8. Petition number 4 of 2016 was filed in the High Court of Kenya at Naivasha on 17th March, 2016. The Petitioners therein are, **Nyandarua North Bar Owners Welfare Association, South Kinangop Bar**

Operators Self-Help Group, Magumu Bar Owners Self Help Group, Kipipiri Bar Owners Welfare Self Help Group, and Karau Alcohol Business Operators (the 1st to 5th Petitioners respectively). Sued as Respondents are the County Commissioner, Nyandarua, the County Police Commander, Nyandarua and the Attorney General. The County Government of Nyandarua is enjoined as Interested Party.

9. The Petitioners are described as registered Self-Help Groups drawing membership from bar operators and dealers in alcoholic drinks within Nyandarua County. Apart from necessary variations in the capacities of the Respondents, the averments in the said Petition match almost word for word with Petition No. 2 of 2016. Petition No. 4 of 2016 is supported by the affidavit sworn by **Josphat Muiru Ndegwa** who describes himself as the chairman of the 1st Petitioner, with authority to swear on in behalf and on behalf of members of all Petitioners. The Petitioners' complaint as stated in the Petition and the supporting affidavit is exactly similar to that contained in **Petition 2 of 2016** and repeating it here would be redundant.

10. In opposition to the above Petition the Respondents filed grounds of opposition. The grounds, in part restate key grounds highlighted in respect of Petition No. 2 of 2016. Other grounds included are that the courts interference in the matters raised by the Petitioners would amount to usurping the discretionary functions under statute, of the Kenya Bureau of Standards, the Kenya Revenue Authority, the Ministry of Health and National Agency for the Campaign Against Drug Abuse (NACADA), which bodies are mandated to regulate the alcoholic industry, and that **Petition No. 4 of 2016** is fatally incompetent and ought to be struck out.

11. Following the filing of **Petition No. 4 of 2016** on 18/3/2016, this court noted the forementioned similarities with and directed that the Motions therein be heard on the same date as the one in **Petition 2 of 2016**. On the hearing date, parties agreed to conservatory orders as sought in the Motions and a date was set for hearing the Petitioners. On the slated hearing date (21/6/2016) the parties consented that arguments made in respect of **Petition No. 2 of 2016** (hereinafter the first Petition) apply to **Petition No. 4 of 2016** (hereinafter the second Petition). **The Petitioners' Submissions**

12. Mr. Chege appearing for the Petitioners in both Petitions restated the key facts of the Petition, mainly that the Petitioners' members had, pursuant to the provisions of the Nyandarua County Alcoholic Drinks Act, 2014 applied for liquor licences and that the same were undergoing the process of approval. That the Respondents had in the material period effected the arrest and mounted prosecution of the members' employees and or operators themselves for want of requisite liquor licences.

13. He contended that the members were previously licenced under the regime of the Alcoholic Drinks Control Act 2010, and that, by dint of Section 14 (4) of the said Act which has a counterpart in Section 15 (4) of **Nyandarua County Alcoholic Drinks Act**, the said previous licences remained in force pending renewal.

14. He took the position that the arrest and prosecution of the members and or their employees amounted to unfair treatment and a violation of the members' rights under Article 47 of the Constitution and Section 4 of the Fair Administrative Actions Act. He asserted that the Petitioners' members have a legitimate expectation based on law, in this case, Section 15 (4) of the Nyandarua County Alcoholic Drinks Act that they would be treated in accordance thereto.

15. On this facet of his argument Mr. Chege placed reliance on several passages contained in the decision of **Odunga J in Keroche Breweries Limited & 6 Others –Vs- Attorney General & 10 Others [2016] eKLR**. He pointed out that the Respondents having failed to file a Replying Affidavit had not controverted the facts set out by the Petitioners. Further, that the principles applicable to Constitutional petitions are dissimilar to those applicable in civil disputes regarding injunctions. His argument was that in the former injunctions can issue where illegality is demonstrated against a Respondent, as in this case, in keeping with the test laid out in **Anarita Karimi Njeru –Vs- Republic (No. 1) [1979] 1 KLR 154**.

The Respondents' Submissions

16. With regard to the first Petition, the Respondents' written submissions primarily highlight the principles enunciated in **Giella –Vs- Cassman Brown & Co. [1973] E.A. 358**, on the grant of an interim injunction. Secondly, the submissions pointed out the Respondents' obligations to consumer protection under Article 46 of the Constitution and stressed that the Respondents cannot be prevented from executing that duty so long there is due compliance with the law.

17. The Respondents urged the position that it is against the public interest to allow the operation of unlicensed alcohol outlets to secure private businesses, as public interest outweighs private interest. In this regard, two authorities are cited, namely, **Kenya Guards Allied Workers Union -Vs- Security Guards Services & 38 Others Miscellaneous 1159 of 2004** (sic) and **John Kinyua Munyaka & 11 Others -Vs- County Government of Kiambu & 3 Others [2014] eKLR**. Finally, that the closure of the Petitioners' members operations and the arrest of operators was legally effected.

18. The Respondents' submissions on the second Petition took a rather different tangent in my view. In many respects, the submissions contained factual material that properly belong to an affidavit, rather than legal arguments. That notwithstanding, some legal points were also made. Citing **Anarita Karimi Njeru -Vs- the Attorney General (Supra)** and **Rashid Aloggoh & 245 Others -Vs- Haco Industries Ltd [2007] eKLR** the Respondents assert that a petition alleging violation of a Constitutional right must state, with reasonable precision, what provisions of the Constitution were violated in relation to the Petitioner.

19. The Respondents counter the Petitioners' basic premise by stating that the fact that their members had applied for licences is of no moment as alcohol licencing was not within the purview of the Respondents' duties. Thus, any recourse by the Petitioners in that regard lay with the Interested Party. The Respondents emphasised that the alcoholic licences previously held by the Petitioners had expired in June 2014 and thus, the said licencees were operating illegally. Hence the closure of businesses, arrests and prosecutions complained of. The Respondents argued finally, that the court would be usurping the role of statutory bodies charged with the responsibility of regulating the alcohol industry if it were to interfere in this matter as prayed by the Petitioners.

Analysis and Determination

20. As far as the factual basis of the two Petitions is concerned, several matters are not dispute. The Petitioners members' chief complaint arises from the fact that, several of their alcoholic outlets have been ordered closed. Further, in some instances bar workers/operators were arrested and prosecuted for possession and sale of alcoholic beverages without the requisite licences under the Alcoholic Drinks Control Act of 2010. There is hardly any dispute that a majority of the Petitioners' members were previously licenced under the Alcoholic Drinks Control Act, 2010 and that their licences have since expired; that the Petitioners' members have applied to the Interested Party for renewal and or issuance of new licences in line with the **Nyandarua County Alcoholic Drinks Act**.

21. The Petitioners assert that the licences have not issued as the licencing process is yet to be completed. That notwithstanding the foregoing, the Petitioners' members have continued to operate alcohol outlets without hindrance by the Interested Party.

22. Although the right in Article 40 of the Constitution was among the rights listed in the Petition as contravened, it was not canvassed at all. Thus in my considered view, only two legal issues require determination in this case. These are:

- a) Whether the Petitioners' members have established a legitimate expectation based on the law, regarding continued operation of liquor retail business without holding relevant liquor licences.
- b) Whether the admitted actions of the Respondents amount to a violation of the members' rights to fair administrative action.

Based on the determination in respect of a) and b) above, the court will ultimately have to decide

whether the orders sought in the Petitions ought to be granted.

Whether the Petitioners' members have established a legitimate expectation based on the law, regarding continued operation of liquor retail without holding relevant liquor licences

23. Article 47 of the Constitution is in the following terms:

“(1)Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

24. Regarding the said Article, I agree with the sentiments of **Odunga J in Keroche Breweries Limited case (Supra)** that its emphasis is fairness in administrative actions. The Fair Administrative Actions Act which gives effect to this article is more expansive on the question of both substantive and procedural fairness.

25. What I understood the Petitioners' advocate to assert in this case was that the Petitioners' members right to fair administrative action was hinged upon their legitimate expectation to be treated according to the law, in this case, the Nyandarua County Alcoholic Drinks Act. A reading of Article 47 (1) bears out such a postulation; the provision envisages expeditious, efficient, lawful, reasonable and procedurally fair administrative action as a right due to every person. Unlawful actions by definition cannot be fair even if they are expeditious or efficient.

26. The Supreme Court, in **Communications Commission of Kenya & 5 Others -Vs- Royal Media Services Ltd & 5 Others [2014] eKLR** outlined the principles governing the successful invocation of the doctrine of legitimate expectation as follows:

“[269] The emerging principles may be succinctly set out as follows:

- a. there must be an express, clear and unambiguous promise given by a public authority;**
- b. the expectation itself must be reasonable;**
- c. the representation must be one which it was competent and lawful for the decision-maker to make; and**
- d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution.”**

(See also **HWR Wade & C. F. Forsyth Administrative Law** Tenth Edition).

27. In the case of **Kalpana H. Rawal -Vs- Judicial Service Commission & Others Petition No. 386 of 2015 [2015] eKLR**, a five judge bench observed regarding Article 47 that:

“It has been held that Article 47 was intended to subject administrative processes to constitutional discipline, hence relief for administrative grievances related to fair administrative action, was no longer confined solely to the realm of common law. See *Dry Associates Limited v Capital Markets Authority & Another H C Petition No. 328 of 2011.*”

This means that in proper cases an aggrieved party, can elect to enforce the right guaranteed under Article 47 by way of a Petition or through judicial review (Common law).

28. In the **Rawal Case**, the court cited a portion from the decision of the Court of Appeal in **Judicial**

Service Commission -Vs- Mbalu Mutava & Another [2015] eKLR as follows:

“What is an administrative action targeted by Article 47(1) will depend on a proper construction of Article 47(1) in conjunction with relevant provisions of the Constitution including Article 10 relating to national values, article 21 on the Bill of Rights, Article 73 on leadership and integrity, and the empowering provisions of the Constitution or law on the basis of which the decision is made or contemplated to be made. In other words, it will largely depend on characteristics of the decision, the nature and substance of the decision and the objective it is intended to achieve. An administrative action includes an administrative decision which adversely affects or is likely to affect any person or contemplated to be made by certain public officers, state officers and state organs in the national and county executives pursuant to a power conferred by the Constitution or any written law.” [Emphasis supplied]

29. The Respondents’ decision to close down the Petitioners’ members’ alcohol outlets and to arrest the operators and/or their workers was quasi-administrative, based on statutory powers of the police under the National Police Service Act, *inter alia* deter, to deter, detect crime and apprehend those suspected of committing offences. As the Director of Public Prosecutions for an unknown reason was not made a party to these proceedings, I cannot make any comment on the subsequent arraignment of the said operators in court. The mandate of prosecutions lies squarely with the Director of Public Prosecutions and not the Respondents, and in my view the police cannot be asked to give an answer on his behalf in respect of the impugned prosecutions.

30. The Petitioner s’ asserted legitimate expectation was anchored in their interpretation of Section 15 (4) of the **Nyandarua County Alcoholic Drinks Act**. The Section states:-

“Where an application for the renewal of a licence has been made and the Sub-county Committee has not by the date of expiration of the licence reached a decision thereon, such licence shall continue in force until the decision of the Sub-county Committee is made known.”

31. The above Act came into force on 29th August 2014, effecting the devolution of the function of licensing of alcoholic drinks and other related functions, to the Interested Party. The preamble thereof reads:-

“AN ACT of the Nyandarua County Assembly to provide for the licencing and regulation of the production, sale, distribution, consumption and outdoor advertising, of alcoholic drinks, and for connected purposes

ENACTED by the Nyandarua County Assembly as follows”

32. In this case, there is no dispute that the licences issued under the Alcoholic Drinks Act 2010 and exhibited in the second Petition as **JMK 3(C)** had expired on 30th June 2014. No past licences were exhibited in the first Petition, save for applications for licences to the Interested Party marked as **JKC 3**. Indeed looking through the two Petitions, it seemed to me that the second Petition was filed for the oblique purpose of introducing the said previous licences **JMK 3(C)**. I say so because, upon reviewing the list of licence Applicants in both Petitions, by operators’ name and business names, there was clear duplication.

33. With the exception of bars christened **Seed of Rest, Pinewood Bar, Las Vegas Bar, Leaders Paradise** operated by Josphat Muiru Ndegwa, Irene Muthoni Wagura, Mwangi Ndirangu Njuguna and Esther Kariuki, respectively, all other 33 bars and corresponding applicant operators listed in the second Petition are also listed in the first Petition. Additionally, in the latter petition there were five exceptions, namely, **Tavan Pub, Stress Free Bar, Hollywood Bar, Charagita Bar and Little London Bar**, operated by licence Applicants James Githiomi Gachanja, Samuel Waweru Ndungu, Moses Njaramba Kamau, Mwangi Mutitu and Samuel Muraguri Mitambo, respectively.

34. The 1st and 2nd Respondents in the second Petition are no different from the Respondents in the first

Petition, only that the former are in charge of the County. Similarly the cause of action, based on the dates of the Charge Sheets **JMK 4** and **JKC4** arose prior to the filing of the first Petition. As I said earlier, the substance of the two Petitions is similar. I will revert to this matter later.

35. The point to be made here regarding the first Petition is that no prior liquor licences were exhibited, despite assertions to that effect by the Petitioners. That notwithstanding, it is true that this was not a disputed issue. The question is whether Section 15 (4) of the **Nyandarua County Alcoholic Drinks Act** can form the basis of the Petitioners asserted legitimate expectation.

36. The operative words in that section are “**Sub-committee has not by the date of expiration of licence reached a decision thereon.....**” This section anticipates the licence renewal application having been made **before** the expiration date of the subject licence, and a delay in the decision of the Sub-county committee. Only in such case is the previous licence to remain in force pending the decision of the Sub-county Committee.

37. In other words, where as in this case, an application is made for “renewal” of a licence after expiry of the liquor licence, the licence cannot remain in force, having ceased operating on the expiry date. And of course a fresh application for a licence would mean that the fresh Applicant must wait for the approval i.e. has no licence pending the decision of the sub-county committee.

38. The position in this case is that the Petitioners’ members’ licences under NACADA pursuant to the Alcoholic Drinks Control Act had expired in June 2014. Their subsequent applications in March 2010 cannot qualify as renewals under Section 15 (4). Thus on a proper interpretation of Section 15 (4) of the **Nyandarua County Alcoholic Drinks Act** the Applicants had no licences under the Alcoholic Drinks Control Act 2010 or the Nyandarua Alcoholic Drinks Act at the time of lodging applications in March 2015, or during the material period.

39. That notwithstanding, and despite the clear provisions of the above liquor laws, the Petitioners’ members continued to operate bars and other liquor premises. The assertion that the Interested Party or the Respondents had “induced” the Petitioners’ members to believe that their operations would not be interfered with must be examined on the basis of the law.

40. As the Supreme Court stated in the **CCK Case** (supra) there cannot be a legitimate expectation against clear provisions of the law or the Constitution. **H.W.R. Wade & C.F. Forsyth (Supra)** quoted in the **Rawal case** has stated:

“It is not enough that an expectation should exist, it must in addition be legitimate”

41. At pages 450 to 451 the authors stated that the promise (by word or deed) upon which an expectation is premised must be lawful. The authors asserted that:-

“An expectation whose fulfilment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation. It is inherent in many of the decisions, and express in several, that the expectation must be within the powers of the decision-maker before any question of protection arises. There are good reasons why this should be so: an official cannot be allowed in effect to rewrite Acts of Parliament by making promises of unlawful conduct or adopting an unlawful practice.” (Emphasis added)

42. From the foregoing, neither the Respondents nor the Interested Party in this case have the capacity to suspend the operation of the law and to make promises to the Petitioners’ members that the applicable law will not be enforced pending the processing of their liquor licence applications. In my view, purported promises of such a dubious nature would also run afoul of public policy and invite anarchy, in addition to being *ultra vires*. In particular, as pointed out by the Respondents, they have no role in the licencing of liquor outlets, and any promises by deed or action made in that regard would be *ultra vires*.

43. I observed recently in **Andrew Omwenga Wanjiku t/a Triangle Bar & Others -Vs- Nakuru**

County Commissioner & 3 Others Petition No. 5 of 2015 that:-

“Security agents and police have the duty and mandate to enforce the law, in this case the Alcoholic Drinks Control Act which is still in place, and requires that businesses/people dealing with alcohol be licensed accordingly. Actions taken lawfully by authorized persons in the enforcement of the Act, as appears to be the case here, cannot ordinarily give rise to a valid claim of violation or threat of violation of the alleged rights of those on the wrong side of the law.”

44. The Petitioners’ members in this case were admittedly operating bars without liquor licences. The facts of the present case differ from those in the **Keroche Breweries** case in one major respect. In the latter case current and valid licences had been withdrawn or suspended by the Respondent body as paragraph 136 of the decision clearly indicates.

45. In light of the foregoing, the court finds that the Petitioners’ members have not established a legitimate expectation to continue operating bars without licences, pending issuance of the same by the Interested Party.

Whether the admitted actions of the Respondents amount to a violation of the members’ rights to fair administrative action.

46. Flowing from the above finding and in light of the law under which the Respondents operate, the actions taken by the Respondents were intended to enforce the relevant liquor law. In the circumstances, the violation of the alleged rights of the Petitioners’ members does not arise. The Petitioners have not demonstrated the violation of their members’ right to fair administrative action.

47. Since the decision in **Anarita Karimi** supra it has been established that a party alleging that his fundamental rights and freedoms have been violated, and who in seeking redress invokes Article 22 to enforce the same, must identify the said violated right, and demonstrate to the court how the same have been violated in relation to him. See also **Peter Oduor Njoge –Vs- Francis Ole Kaparo & 5 Others Petition No. 2 of 2012 [2012] eKLR; Trusted Society of Human Rights Alliance –Vs- Attorney General and 2 Others [2012] eKLR.**

Disposition

48. Before making final disposition orders in this matter, I consider it necessary to revisit the issue relating to the parties in the two Petitions. As earlier observed, from the materials annexed to the supporting affidavits, the second Petition was filed in respect of more or less the same individuals or members listed in the first Petition as aggrieved bar operators. However the Petitioner in the first Petition is Ol Joro-Orok Self Help Group, while in the second Petition, five Self Help Groups are the Petitioners, acting on behalf of alleged members. The question that has exercised my mind is how such a large number of members hold membership in six different self-help-groups in respect of the same businesses. And why these members found it necessary to file two similar Petitions in respect of the same question and against the same parties.

40. Thirdly, despite the fact that the two Petitions challenge the prosecution of Petitioners’ members and or their employees, the Petitioners decided against joining the Director of Public Prosecutions. These actions to my mind smack of an abuse of the process of the court. Finally, it is intriguing to this court that despite the obvious fact the Petitioners’ members’ difficulties have arisen from the Interested Party’s delayed processing of their liquor licence applications, the Petitioners, against all odds sued the Respondents instead. And that the Interested Party through a Replying affidavit threw its support behind the Petitioners in both Petitions.

50. I agree with the Respondents’ submissions that if the Petitioners have any recourse, it is against the Interested Party whose admitted tardiness has seemingly left the Petitioners’ members in a lurch. In my considered view, there is no merit or substance in the two Petitions before me and I accordingly dismiss

them. And further, for reasons given in the penultimate paragraphs [40 & 41], I order that the Petitioners in the respective Petitions bear all the costs occasioned by the Petitions.

Delivered and Signed at **Naivasha** this **4th** day of **November, 2016**.

Mr. Chege for the Petitioners

Mr. Kangethe holding brief for Mr. Kirui for the Respondents and acting for the Interested Parties

Court Clerk: Barasa

C. MEOLI

JUDGE