



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC. APP. NO. 522 OF 1998**

**FAI AMARILLO WINNERIES.....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL & OTHERS.....DEFENDANT**

**R U L I N G**

The respondents issued orders directing and closing the applicants winery at Naivasha and all the outlets.

Being aggrieved by the said orders, the applicant moved the court by way of Judicial review to move the said orders and Notices to the High Court for purposes of quashing the same.

The Notice of motion before me is under Order 53 Rules 3(1) and 7 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. There is a statement annexed thereto in accordance with order 50 Rules 1,2, and 3 of the Civil Procedure Rules and a supporting affidavit sworn by one Peter Gilbert Njoroge Nga'nga.

The learned counsel for the applicant has confirmed that leave and Notice to the Registrar was given. It is true that applications of this nature are to be in the name of the Republic but I see no prejudice if that form is not complied with. I therefore find that the application is properly before the court.

The evidence before me includes Factory Inspection Report which concludes that it was in satisfactory condition and recommended for registration. There is also a Liquor licence issued under the Liquor Licensing Act due to expire on 31st December, 1998. Another licence under the said Act with the same expiry date authorises the applicant to bottle medusa wine. Also as part of the evidence is a certificate of analysis issued on 1st April, 1998 in respect of Medusa Wine issued by the Kenya Bureau of Standards. The remarks read that the sample complies with the specification on the tested parameters."

There is yet another certificate of analysis dated 26th May, 1998 in respect of medusa Pineapple wine issued by the Government Chemists Department. It concludes that "the sample complies with the standards in the Foods, Drugs and chemical Substances Act Cap.254.

The notices issued by the Public Health Officer stated in part, that various brands of alcoholic beverages allegedly originating from Naivasha are suspected to be contaminated and dangerous to life. This was a blanket notice and did not isolate the applicants product. as it is, expert evidence I have set out hereinabove contradicts the allegations in the notice.

With respect, I agree that the applicant's product should be judged by its own. The evidence before me is conclusive that the product is wholesome. In that regard therefore this application must succeed. I grant order as prayed in the Notice of Motion dated 28th May, 1998 plus costs. Orders accordingly

**Dated and delivered at Nairobi this 16th day of July, 1998.**

**A. MBOGHOLI MSAGHA**

**JUDGE**

