



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION NO. 68 OF 1994

REPUBLIC.....APPLICANT

VERSUS

1.MOMBASA LIQUOR LICENCING COURT.....1ST RESPONDENT

2. SONIA ARTS LTD.....2ND RESPONDENT

3. LUIZANA SUPERMARKET & BOUTIQUE LTD.....3RD RESPONDENT

RULING

The applicant, Cosmas Adhiambo Amonde, is the proprietor of Le Cosy Cocktail Bar and Restaurant on plot 5322/1/MN leased from Sonia Arts. He is aggrieved by the decision of the Mombasa Liquor Licensing Court whereby Sonia Arts was granted a licence to operate bar business in premises which was subsequently described by the Mombasa District Commissioner as “a small structure identical to a *kiosk* at the entrance of the premises leading to Le Cosy Cocktail Bar and Restaurant.” This is the application of Mr Amonde for judicial review for orders of *certiorari* and prohibition in respect of the decision of Liquor Licensing Court. If the application is successful the effect would be to quash that decision.

It is settled law that the ambit of the judicial review is the process by which the High Court exercises supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.

In the case of *Chief Constable of North Wales Police v Evans* [1982] 3 All ER 141 at p 1174 Lord Brightman observed:

“Judicial review is concerned not with the decision but decision-making process.”

In the case of *Re Amin* [1983] 2 All ER 864 at p 868 Lord Fraser expressed the same view when he said:

“Judicial review is concerned not with the merits of the decision but the manner in which the decision was made.”

In an application such as the instant one the duty of the Court is to confine itself to the question of legality: it is to find out whether the inferior court or tribunal did exceed its powers, committed an error of law, committed a breach of the Rules of Natural Justice, reached a decision which no reasonable tribunal could have reached, or abused its powers.

The Liquor Licensing Act lays down the procedure and powers of the Licensing Court.

First the applicant for a licence makes a written application. Notices of such application are then affixed on the notice board or in a conspicuous part of the offices of the District Commissioner for 21 days.

Objections to the granting of the licenses are lodged within that period. On the hearing of the applications all matters pertaining thereto are raised and deliberated upon before a decision to grant or refuse the license is made.

The applicant herein has averred several matters. But paragraph 11(i) of his statement is the only one in which he comes closer to dealing with the issue that ought to be discussed and determined in this application. He deponed:

“That the relevant procedure in acquisition of the liquor licence (by Sonia) was utterly flouted or otherwise not followed at all as the said premises in respect of the said licence granted to the 3rd interested parties were never certified and proper for the corresponding liquor business purposes by the relevant health department, police department, and the local authority.”

In reply Sonia Ltd filed a replying affidavit to which they annexed several documents. One of those documents is the copy of the minutes of the court. These minutes show that the District Trade Development Officer, the Ag Chief Public Health Officer of Mombasa Municipal Council and the Chief Inspector of Police representing the OCPD are some of the members of the Court who attended on that occasion. The minutes also show that the application of Sonia Ltd was considered and granted in a manner similar to other applications. It has not been suggested that prior to this occasion the application was not affixed on the notice board as required. It is therefore pertinent to note that there was no objection lodged to the Court. Nor was

there an adverse report from the police, trade officer or health inspector. There was therefore no evidential basis upon which the Court would have rejected the application. It must be borne in mind that this court's jurisdiction in this application is specifically limited to the inquiry whether the applicant's rights were infringed and whether they were so infringed by the misuse of power. In the course of his submission Mr Ochuka, counsel for the applicant, suggested that the Court should have made visits to the premises and assessed their suitability for the bar business before granting the licences. But such method, while laudable, was not enacted into law. So, it cannot be said that the Court misused its powers when it did not visit the premises before licensing them. Maybe the law should be made more elaborate. It may require that the views of the residents of the area where the premises for proposed bar are situated should be sought much more aggressively. But, otherwise, the decision making process in the present case was done within the parameters of the law. I am precluded by the scope of this application from directing my efforts towards the merits of the decision as that would be usurping the power of the lower court under the guise of preventing the abuse of power.

For these reasons I dismiss the application but I make no orders as to costs.

Dated and Delivered at Mombasa this 2nd day of June 1994.

I.C.C.WAMBILYANGAH

JUDGE