



**Kipchirchir & 12 others v Governor Uasin Gishu County & 10 others (Constitutional
Petition E023 of 2024) [2025] KEHC 13892 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION E023 OF 2024**

E OMINDE, J

OCTOBER 2, 2025

**IN THE MATTER OF ARTICLES 3, 6,10,19,20(1), (2) (3), 21 (2) (3) (4), 22,165 (3)
AND 258 OF THE CONSTITUTION AND THE FOURTH SCHEDULE THEREOF.**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE PETITIONERS
FUNDAMENTAL RIGHTS AND FREEDOMS PROTECTED BY ARTICLES
27, 28, 29, 40, 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTION 11,12,13,14,15,16,17 AND 23 OF
UASIN GISHUCOUNTY ALCOHOLIC DRINKS CONTROL ACT, 2014**

AND

**IN THE MATTER OF THE NATIONAL GOVERNMENT CO- ORDINATION
ACT,PUBLIC OFFICERS ETHICS ACT, NATIONAL POLICE SERVICE ACT**

AND

**IN THE MATTER OF SECTIONS 118 AND 121 OF THE CRIMINAL
PROCEDURE ACT (CHAPTER 75 OF THE LAW OF KENYA)**

AND

IN THE MATTER OF AN APPLICATION

BETWEEN

**COSMAS KIPCHIRCHIR 1ST PETITIONER
NANCY KIGEN 2ND PETITIONER
EUNICE CHIRCHIR 3RD PETITIONER
NEWTON KIPKOECH 4TH PETITIONER**



BENJAMIN KIPLIMO YATOR	5 TH PETITIONER
BEATRICE JEROP	6 TH PETITIONER
HELLEN ALOKITA KADELI	7 TH PETITIONER
EVANS JEBET	8 TH PETITIONER
ROBINSON KEMBOI	9 TH PETITIONER
JONAH BIWOT	10 TH PETITIONER
SUSAN KEMBOI	11 TH PETITIONER
PERIS MAIYO	12 TH PETITIONER
BEATRICE NAFULA	13 TH PETITIONER

AND

THE GOVERNOR UASIN GISHU COUNTY	1 ST RESPONDENT
COUNTY ALCOHOLIC DRINKS CONTROL UNIT, UASIN GISHU COUNTY	2 ND RESPONDENT
ISAAC CHIRCHIR	3 RD RESPONDENT
HUDSON NYAL	4 TH RESPONDENT
JOHN CHIRCHIR	5 TH RESPONDENT
PAUL ROTICH	6 TH RESPONDENT
SAMUKWO	7 TH RESPONDENT
SAMMY KEMBOI	8 TH RESPONDENT
EZEKIEL RUTO	9 TH RESPONDENT
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS	10 TH RESPONDENT
THE ATTORNEY GENERAL	11 TH RESPONDENT

RULING

1. By way of Notice of Motion dated 12th September 2024, the Applicants seek the following orders
 1. Spent
 2. That this Honourable Court do issue a temporary injunction against the Respondents herein from conducting crackdown on business premises specifically to raid, forcefully confiscating, liquor, disrupting businesses or in any way suspending or closing operations of the Applicants' bar businesses for reasons other than verbal by the declaration made on 14th March 2024 by the 2nd and 3rd Respondents.
 3. Spent



4. That the Honourable Court do issue a summon to the 1st to 10th Respondents herein requiring the said officers to give or render a proper inventory of the confiscated crates of beer, bottles of wine and spirits, boxes and or cans of assorted liquor drinks, the property of the Applicants herein.
5. That all necessary and consequential orders be made that do meet the ends of justice in the circumstances of the case.
6. That costs of this Application be borne by the Respondents.

Applicants Supporting affidavit

2. The 1st Petitioner swore an affidavit in support of the Application dated 12th September 2024 on behalf of all the Applicants. He stated that they are businessmen involved in the operation of bars and related liquor trading business within Uasin Gishu County and other parts of Kenya. He urged that they have been conducting bar business in Merewet Trading Center from diverse years having obtained the requisite licenses from the 2nd Respondent and where at various stages of acquisition of renewal for the year running in consonance with the directives and requirements by the 2nd Respondent. He annexed copies of evidence as "CS I".
3. He urged that on 14th March 2024, the 3rd Respondent acting under the guise of the 1st and the 2nd Respondents purported to conduct a public participation exercise, at Merewet 'Trading Center, and alleged to have presided over a meeting where it was resolved that all bar business were closed in Merewet Trading Center. He annexed copies of evidence of the same as CSII. Further, that the meeting was orchestrated by the 4th to 10th respondents, who quickly swung to action and purported to support the skewed exercise couched, as-a public exercise in, favour closure of all bars at Merewet Trading Center. He annexed copies of electronic evidence as annexure CSIII.
4. He stated that the 1st and 3rd Respondent then issued a public order to all their agents, including security organs within the Moiben area, to confiscate liquor products in bars, seize and destroy all tools of trade in their custody in a crackdown he illegally sanctioned, annexing evidence of the same to the affidavit as 'CS Iv'. Further, that on 14th March 2024 the 1st, 3rd and 10th Respondents, acting under an illegal and unlawful directive, forcefully raided their business premises in Merewet Trading Center, disrupting their business and confiscating liquor packed in beer bottles, cartons, tanks, cans and crates, which they took to unknown destinations. He stated that they consequently reported the incident at the Merewet Chief's Office on the same day, but the officer categorically refused to note down their reservations. He annexed a Copy of evidence of this and marked it as "CM v".
5. He stated that there is an imminent danger of destruction of liquor products with an aim of obliterating evidence of the Respondent's unconstitutional, unlawful and illegal activities thereby rendering the Applicants' pursuit of justice an exercise in futility, yet they had been licensed to operate business by the 2nd Respondent and some members were awaiting licenses, annexing copies of evidence of the same as 'CMvI'. He stated that some of the confiscated merchandise had been stored in unsafe and unsecure conditions, exposing them to damage and theft. Additionally, he stated that they were never served with the inventory of the confiscated goods.
6. The deponent averred that they have reasonable reservations based on credible information that a danger of a further crackdown is looming and further, that their landlords have insisted to evict them for failure to pay rent. He urged the court to allow the Application in the interest of justice.



1st and 2nd Respondents' Replying Affidavit

7. The 1st and 2nd Respondents filed a Replying Affidavit dated 28th January 2025, sworn by Kofya Arap Maiyo the Acting Director, Alcoholic Drinks Control Board. He urged that the Application has no merit and only intends to undermine the Respondent's Administrative powers and prayed that the court to dismisses it.
8. The Deponent averred that the Uasin Gishu Trade and Licensing Act requires all licensed traders to pay and operate the said premises within stipulated laws and regulations and further, that the Uasin Gishu County Drinks Control Act, 2014 establishes a licensing committee whose mandate is to ensure that effective public participation is conducted before a license to operate a bar is issued. He pointed out that the Applicants admitted to not having licenses for the year 2024 and the allegations that they were in the process of obtaining the same was unfounded as the same Application was instituted in the month of October 2024, way behind the time scheduled for renewal and issuance of trading licenses.
9. He stated that for the above reason, public participation was conducted and it was established that the said premises were situated in a residential area, thus, it was causing nuisance. That on 22nd February 2023, due to public demand, a public participation was conducted by the County Government officials at the Chiefs' office Mumetet Location, where members of the public raised serious concerns about the number of bars licensed to operate at Merewet Trading Center. The County Government subsequently conducted another public participation on 14th March, 2024, where members of the public raised issues of increased insecurity attributed to the high number of bars operating in the area, it was unanimously agreed that all the bars be closed with immediate effect. He annexed and marked as AK1 [a] and [b] minutes and attendance list.
10. The deponent averred that the Applicant did not follow the due process by instituting a complaint to the County Alcoholic Review Drinks Appeal Committee, as established under the Act. Further, that liquor licensing is a devolved function hence, if the orders sought are granted, it will amount to usurping the mandate of the Respondents bestowed by *the Constitution*. He urged that it is in the interest of the public that the Application be dismissed and the Respondent be allowed to carry out its Constitutional mandate without undue influence.

4th – 11th Respondents Replying Affidavit

11. The Replying affidavit dated 1st October 2024, was sworn by Sammy Kiprono Kemboi, the Area Chief for Mumetet Location, Moiben Sub-County, on behalf of the 4th – 11th Respondents. He stated that Merewet Centre sits at the boundary of Kongasis and Mumetet Location and in 2023, 29 Bars were operating at Merewet trading centre. During the months of October, November and December, an increased number of crime and death incidences were reported. Further, that on 22nd February 2023, during Public Participation held by the County Government at the Chief's Office, Mumetet Location, members of the public raised the issues of the number of bars licensed to operate at Merewet Trading Center. It was resolved that there be a meeting to deliberate on that issue which was scheduled for 15th March 2024, and later adjusted to 14th March of 2024. In a meeting attended by the Applicants, it was resolved that all bars be closed with immediate effect. He annexed and marked a copy of minutes and attendance list marked SKK IA & B.
12. The deponent averred that the ward administrator gave the bar owners 3 days to effect the resolution and denied any raid having been conducted on 14th March 2024 or any confiscation having occurred. He deposed that the Replying Affidavit of Cosmas Kipchirchir dated 12th September 2024 contains a lot of falsehoods aimed at misleading the court. He pointed out that at paragraph 4 of their supporting



affidavit, the Applicants admit to not having any licenses for the year 2024 and further, that the allegation that they are in the process of acquiring the licenses are unfounded as in the month of October 2024, Applications for licenses for the year 2025 were already ongoing. He stated that at paragraph 5 of the Supporting affidavit, the Applicants purports to annex evidence marked as CS1I which is not attached to the Application and in the same paragraph, the Applicants admit that there was public participation where there was a resolution that all bar businesses be closed in Merewet Trading Center.

13. The deponent averred that in paragraph 6 of their affidavit, the Applicants refer to a non-existent annexure and therefore the allegations made therein cannot stand and further, that in paragraph 8, the Applicants allege that they reported the incident at Merewet Chief's Office yet there is no such office within Merewet Trading Centre. He stated that the photos attached in the same paragraph 8 as CMv are random photos which are not explained and could have been taken anywhere. Additionally, he pointed out that in paragraph 9, the Applicants have attached Licences for the year 2023 which cannot form the basis for operating in 2024. He stated that the allegations in paragraph 10 were wild and speculative and not backed with any proof whatsoever. He urged that in paragraph 11, the Applicants allege that the purportedly confiscated goods have been stored in unsatisfactory conditions yet the evidence referred to in that paragraph as CMvII is a petition addressed to the Assistant County Commissioner and not a photo of the alleged goods or the unsatisfactory conditions.
14. The deponent averred that the receipts attached to the Supporting Affidavit are unmarked and do not belong to any bar situated within Merewet Trading Center. Further, that there is no annexure showing any raid or inventory of any goods as there was no raid and no item confiscated in the first place. He stated that there are no bars licensed to operate within Merewet Trading Centre and therefore the injunction against crackdowns is unenforceable. Further, that the Applicants are operating without valid licences, solely on the basis of the interim orders issued by this Court and should not be allowed to use the Court to perpetuate an illegality to the detriment of the public. Further, that the Application prays that the 1st - 10th Respondents be summoned to render a proper inventory of the alleged confiscated items yet there was no raid, no confiscation and therefore no inventory to render. He stated that the Application is an abuse of the court process and ought to be dismissed with costs.
15. The 3rd and 12th Respondents did not file any Responses to the Application.

Applicant/Petitioners' Submissions

16. Learned counsel for the Applicants filed submissions dated 13th May 2025. In his submissions, Counsel cited the case of Jubilee Insurance Company Limited v Daniel Maingi Muchiri [2015] eKLR, urging that the Respondents' acts were unconstitutional, unlawful, unjustified and draconian. Further, that the raiding and breaking into Applicant's business premises without a lawful break-in Court Order has not been disputed by the Respondents. He highlighted the replying affidavit of the 2nd Respondent dated 28th January 2025 and pointed out that the deponent did not annex any evidence to support his assertions therein.
17. Counsel submitted that it is undisputed that Respondents, acting under the illegal and unlawful direction of the 1st 2nd and 3rd Respondent through the 4th to 9th Respondent forcefully raided the Applicants business premises at Merewet disrupting their business and confiscated their merchandise and tools of trade which were later taken to Chief's Office the 7th Respondent. Further, that the alcoholic drinks were taken away despite there being valid licenses displayed on the said Business Premises. He submitted that the seizure of the Applicant's tools of trade and merchandise was unconstitutional and unlawful as it was conducted arbitrarily without any lawful break in order



18. Counsel placed reliance on Article 40 of *the Constitution* of Kenya and urged that it is the basis of Sections 118 and 121 of the Criminal Procedure Act, emphasising that Section 118 provides for power by Magistrate Courts to issue search warrants. He reproduced the provisions of both sections. He additionally cited the holding in *Standard Newspapers Limited & Another v Attorney General & 4 Others* [2013] eKLR and urged that the conducting of the forcible raids into the Applicant's Business Premises was blatant and in complete and utter disregard of the aforementioned constitutional and statutory provisions. He submitted that the 1st Respondent is an officer recruited pursuant to Section 15 of the *National Government Co-ordination Act* and additionally, cited the provisions of Article 10 of *the Constitution* as well as Article 232. He cited the case of *Keroche Breweries Limited & 6 Others v Attorney General & 10 Others* [2016] eKLR arguing that the Respondents did not conform to the prescribed Guiding Principles of the said Act which essentially incorporates feasible Constitutional Principles and values of Public Service.
19. Counsel submitted that the confiscation of the Applicant's property in the manner in which it was carried out is an infringement of their privacy contrary to Article 31 of *the Constitution* and that further, by confiscating the Applicant's products and their related tools of trade, vandalizing some of them without affording them legal justification as warranted by the law, the Respondent infringed their right to Fair Administrative Action as stipulated Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act*. He urged that the outlined contravention of *the constitution* of Kenya and the various statutes as highlighted means that the Respondent violated the Applicants fundamental rights to equal protection and benefit of the law and inherent human dignity guaranteed by Articles 27[1], and 28, of *the Constitution* and that therefore this Court should intervene.
20. Counsel placed reliance on the case of *Standard Newspapers Limited & Another v Attorney General & 4 Others* [2013] eKLR. He also cited Article 17 of the International Convention on Civil and Political Rights [ICCPR] which seeks to guard against arbitrary search or other infringement on the right to privacy. He also referred the court to the decision of the Constitutional Court in South Africa in the case of *The Investigating Directorate: Serious Economic offences and others v Hyundai Motor Distributors [Pty] Ltd and Others and Re: Hyundai Motor Distributors [Pty] Ltd and Others v Smith and Others* [CCTIJOO] 120001 ZACC12 on matters search and seizure. He urged the court to allow the Application as prayed.

1st & 2nd Respondents' Submissions

21. Learned Counsel Ms Rop appearing for the Attorney General as well as the 4th to 11th Respondents filed submissions dated 22nd April 2025. She submitted that in considering whether to grant an interlocutory injunctions courts are guided by the principles set out by the court of Appeal in the case of *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358 at 360 where the court laid out the relevant principles. He urged that the issues for determination are;
 - a] Whether the Plaintiff/ Applicant has established a prima facie case with a probability of success;
 - b] Whether the Plaintiff /Applicant will suffer irreparable damage in the event an injunction is not granted; and
 - c] In whose favour does the balance of convenience tilt.
22. Counsel submitted that the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 gave the definition of a prima facie case. Further, that in order to demonstrate a prima facie case, the Applicant should not merely lay out allegations but should adduce evidence to demonstrate that there exists a right and that such a right has been infringed or breached. He urged



that the Application does not show the infringement of the Petitioners rights and the probability of success of the Applicant's case. He submitted that on the other hand, the respondents have adduced evidence in form of the resolutions made during the public participation in Merewet trading center. He maintained that the Application does not show a prima facie case with chances of success at all. Counsel placed reliance on *Kenleb Cons Ltd, v New Gatitu Service Station Ltd & another* [1990] KLR 5571 in this regard.

23. Counsel stated that a look at the annexures to the Replying Affidavit sworn by one Koiya Arap Maiyo shows that the resolutions were made as a result of a legitimate public participation which unanimously agreed to the closure of bars subject of these proceedings. The said closure according to the meetings held by the members of the public was necessary to curb the rising issues of insecurity and lawlessness in the community. This is evidenced by annexure marked AK1 & AK2 being minutes and attendance list of the residence of Merewet. Therefore, the closure of the petitioners' bars benefits the community and not the government. Counsel urged that the injunction sought by the plaintiff is to deprive the community security.
24. Counsel submitted that an Application for injunction must present a case with a probability of high success. He cited the case of *Geoffrey Maina Manjama v Sam Mureithi Murioki T/A Sam* [2014] eKLR and urged that the Petitioners' case is very weak thus the court should not grant the injunctive relief sought. On irreparable harm, Counsel cited the decision of the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* CA No.77 of 2012 on definition and urged that the Respondents and the citizens of Uasin Gishu County stand to suffer irreparable harm, should the injunction order be granted. Further, that by virtue of the bars being already closed, the injunctive prayer being sought in the Application is overtaken by events. He submitted that the balance of convenience tilts in favour of the Respondent, pointing out that the bars were closed in in public interest. In that regard the balance of convenience tilts in favour of the Respondents.
25. Counsel urged that there is no evidence that has been produced in order to prove that there was confiscation of alcohol as alleged. He urged the court to maintain its stature and hold that no inventory can be given where there is no evidence of such raid confiscation or evidence of the persons responsible if the same was ever conducted. He urged the court to dismiss the Application with costs.

Analysis & Determination

26. Having addressed my mind to the pleadings as well as the submissions, it is my considered opinion that he issues that arise for determination are;
 1. Whether an injunction should issue
 2. Whether the orders for an inventory should issue

Whether an injunction should issue

27. Order 40 Rule 1 of the Civil Procedure Rules provides as follows:

“Where in any suit it is proved by affidavit or otherwise:

[a] That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree;

[b] That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the



suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further order.”

28. The conditions for the grant of interim injunctions is well settled in the case of *Giella v Cassman Brown & Co. Ltd* [1973] E.A 358 where it was held that: -

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. First, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an Application on the balance of convenience.”

29. Additionally the Court of Appeal stated as follows in the case *Yellow Horse Inns Limited v Nduachi Company Limited & 2 others* [2017] eKLR :

“All the three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. So that if the applicant establishes a prima facie case, that alone will not avail him an injunction. The court must further be satisfied that the injury the applicant will suffer if an injunction is not granted, will be irreparable. Therefore, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If a prima facie case is not established, then irreparable injury and balance of convenience need no consideration and the matter ends there.”

Prima Facie Case

30. The term “prima facie” case was defined in *Mrao Limited v First American Bank of Kenya* [2003] KLR 125 in the following terms: -

“A prima facie case in a civil Application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

31. It was in the same case stated that: -

“A prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

32. The burden of proving a “prima facie” case would invariable lie on the Applicant. In that regard, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen and 2 others* [2014] eKLR, proclaimed that: -

“the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be



restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

33. The court went further to state that: -

“we reiterate that in considering whether or not a prima facie case has been established, the court does not hold a minitrial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation.

Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges.”

34. Again, the Court of Appeal proceeded to also state that: -

“the standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it the Applicant’s case is more likely than not to ultimately succeed.”

Irreparable harm

35. In the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR the court stated as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

Balance of convenience

36. In the Pius Kipchirchir Kogo case above, the court stated as follows on what a balance of convenience entails:

“..... the meaning of “balance of convenience” in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”

35. Sections 107 and 108 of the [Evidence Act](#) provide as follows: -

107. Burden of Proof



[1] Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

[2] When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

37. In Halsbury's Laws of England, 4th edition, volume 17 at paras 13 and 14 state:-

The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he had failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.

The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either

38. Having laid out the relevant Constitutional provisions, Statute and case Law, I have considered the depositions made by both the Applicants and the Respondents. I am alive to the requirement that at this interlocutory stage, the court must not delve deeply into the merits and demerits of the case but must only satisfy itself that the application by the Applicant has merit on a prima facie basis as defined in the Mrao case herein cited, and that the conditions for the granting of an injunction set out in the case of Giella v Cassman Brown[Supra] and in the other cases that I have herein cited have been met.

39. I note the deposition by the 1st and 2nd Respondent and by the 4th to 11th Respondents that Application should be dismissed on the grounds that at the time the Applicants business premises were closed, their licences had expired that they admitted that they did not have licences for the year 2024 and they had also not renewed the same, hence could not continue in operation. The 4th to 11th Respondents deposed that no raid was conducted and no bars were closed and also at paragraph 24 of their Affidavit that there are no bars licensed to operate at Mererwet Trading Center and therefore any injunction issued against a crackdown is unenforceable. That after the public participation was conducted, the bar owners were given three days to close.

40. That further the Uasin Gishu County Drinks Control Act, 2014 establishes a Licensing Committee whose mandate is to ensure that effective public participation is conducted before a license to operate a bar is issued and hat the same was conducted and it was established that the said premises were situated in a residential area. That in the public participation conducted on 22nd February 2023, members of



the public raised serious concerns about the number of bars licensed by the County Government to operate in Merewet Trading Center.

41. That in the public participation conducted on 14th March 2024, members of the public raised issues of increased insecurity attributed to the high number of bars operating in the area and it was unanimously agreed that all bars be closed with immediate effect. The minutes and attendance list of the public participation exercise was annexed to the Replying Affidavit on behalf of the 4th to 11th Respondents. I note from this list that among those that participated are also quite a number of the Applicants herein.
42. The 1st and 2nd Respondents stated that the Applicants ought to have raised their complaint with the County Review Drinks Appeals Committee as established under the Act and that because licensing is a devolved function, the orders sought herein if granted will amount to usurping the mandate of the Respondents bestowed to them by *the Constitution*.
43. Of note and relevance with regard to the Applicant's application, is that much as there are annexed to their Application copies of Alcoholic Drinks and Alcohol Control Licences issued under the Uasin Gishu *Alcoholic Drinks Control Act*, 2014 by the County of Uasin Gishu, not all the Applicants annexed their licences for reasons that out of the total number of thirteen only copies of six licences are annexed and further, all the licences annexed indicate expiry dates 31st December 2024. Several receipts for renewal of licences were also annexed and the only ones that were for the year 2024 and at various stages of payment in view of the fact that the annual license fees is Ks. 15,000/- as is apparent from the licenses for the year 2023 that the Applicants produced were for Eunice Chirchir for Ks. 3000/-, Benjamin Kiplimo Yator for Ks. 3000/- and Beatrice Nafula for Ks. 3000/-.
44. It should be noted that the remedy of injunction that the Petitioners seek is an equitable remedy and in light of the issues that the court has noted as herein summarised, it is important for the court to point out that under the Doctrine of Equity, there are several maxims of equity that I find relevant in this case which the applicant's herein who are seeking to invoke the discretion of that court to grant them the equitable remedy of injunction that they seek must demonstrate that they have abided by. These maxims they are as follows; Equity follows the law; He who comes to equity must come with clean hands; He who seeks equity must do equity; delay defeats equity; and equity aids the vigilant and not the indolent.
45. Given the omissions on the part of the Applicants that the court has enumerated above based on my perusal of the documentation annexed by the Applicants in support of their Application, I find firstly that they have not sufficiently established a prima facie case with a high probability of success and further that they are all in breach of these applicable maxims of equity that I have herein above highlighted which if they had made effort to comply with, the court in turn would have been persuaded to look at their cause with an eye of equity.
46. The above being the case, as was held by the Court of Appeal in the Nguruman case if the court is satisfied that a prima facie case has not been established, the court then need not consider the two other pillars for the granting of an injunction to wit irreparable loss and balance of convenience. Further to the above, the court also notes that even as the Applicants sought for an order that the Respondents provide an inventory of the goods allegedly confiscated from the Applicants by the Respondents, the annexures availed by the Applicants did not provide sufficient proof firstly that there was a raid conducted and secondly that there were goods that were confiscated from their premises.
47. For the above reasons, it is my finding that the Application by the Applicant's lacks merit and the same is dismissed in its entirety. The interim orders herein issued are now hereby vacated and the court further orders that each party shall bear their own costs.



READ DATED AND SIGNED AT ITEN ON 2ND OCTOBER 2025.

E. OMINDE

JUDGE

