



Republic v Tourism Regulatory Authority; Charo (Ex parte Applicant); Kariuki (Interested Party) (Judicial Review E157 of 2024) [2026] KEHC 698 (KLR) (30 January 2026) (Judgment)

Neutral citation: [2026] KEHC 698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
JUDICIAL REVIEW E157 OF 2024
M THANDE, J
JANUARY 30, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

TOURISM REGULATORY AUTHORITY RESPONDENT

AND

JAPHET NOTI CHARO EX PARTE APPLICANT

AND

HELLEN KARIUKI INTERESTED PARTY

JUDGMENT

1. This Court is tasked to determine the Application dated 4.10.24 in which the Ex-parte Applicant seeks orders That:
 1. That the Honourable Court be pleased to issue judicial review orders of prohibition to prohibit the Respondent and the Interested Party from levying Tourism Licence duty upon the Ex-parte Applicant’s small scale local bar known as BEER INN.
 2. That the Honourable Court be pleased to issue judicial review orders of prohibition to prohibit the Respondent from prosecuting or taking any other action against the Ex-parte Applicant for want of Tourism Licence.
 3. That both the Respondent and the Interested Party be condemned to pay the Ex-parte Applicant’s costs to the Application.
2. The Ex parte Applicant’s case is that the Respondent gave him 3 days notice to take out a Tourism Licence and pay penalties from 2023 failing which action would be taken; that he has been operating



- his Beer Inn, a small typical traditional local bar within Mbuji Wengi Village; that Beer Inn facility has nothing to do with tourism nor does it attract local or international tourists and that his licence does not permit him to engage in tourism activities; that Beer Inn does not come anywhere near the objectives of the *Tourism Act* (the Act) as stated in its preamble; that the Act does not apply to Beer Inn; that Beer Inn has 8 rooms used by his staff and occasionally by lorry drivers; that the Respondent is misapplying the Act and Regulations thereunder; that the Respondent and the Interested Party have ignored his explanation; that it would be fair, just and reasonable for the orders sought to be granted.
3. The Respondent has opposed the Application vide a replying affidavit sworn on 6.11.24 by Wilson Kiplagat, its Regional Manager. The Respondent contends that by virtue of the Ninth Schedule of the Act, the Ex parte Applicant operates a guesthouse, a Class A establishment which has 7 en-suite rooms and a bar; that by virtue of Sections 6, 7(c) 98, 112 and 114 of the Act, Regulation 14 and the Fourth Schedule of the Tourism Regulatory Authority Regulations, 2014, the Ex parte Applicant cannot lawfully undertake the business without a Tourism Licence.
 4. It was further averred that following inspection of Beer Inn in 2020 and 2022, the Respondent recommended to the Ex parte Applicant to apply for a Tourism Licence but no action was taken; that on 24.9.24, the Respondent's officers visited Beer Inn to enforce compliance and issued a demand letter backdated to 2023 for accrued penalties as required by the Regulations; that the Respondent acted within its mandate. The Respondent thus asserts that the Application is devoid of merit as it seeks to interfere with the lawful function and mandate of the Respondent and should be dismissed with costs.
 5. In his submissions, the Ex parte Applicant reiterated his averments in his supporting affidavit. He further submitted that the Respondent has not provided any evidence of existence of a guest house business. While he accepted that he has 8 small rooms used by his staff and occasionally by lorry drivers, his contention is that this does not fall within the definition of the term "tourist". He thus argued that the Respondent has misapplied the Act and regulations and ought to be prohibited.
 6. For the Respondent, it was submitted that the Ex parte Applicant is operating a guest house, the existence of which he has not negated. He has also not disputed that there are people who use the rooms in the guest house as tourists, within the definition in Section 2 of the Act.
 7. The gravamen of the Ex parte Applicant's case is that Beer Inn which he operates, does not fall within the ambit of the Act as it does not cater to tourists whether local or international. The Respondent on the other hand insists that the Act is applicable to Beer Inn on account of the fact that the same has 7 en-suite rooms and a bar.
 8. Section 2 of the Act defines a tourist as:

"tourist" means a person travelling to and staying in a place outside his or her usual abode for more than twenty-four hours, but not more than one consecutive year, for leisure, business or other purpose, not being a work-related activity remunerated from within the place visited;
 9. The Ex-parte Applicant acknowledged that he has 8 rooms at Beer Inn which he stated was used by his staff and occasionally by lorry drivers. The Ex parte Applicant has not however stated that the lorry drivers are his employees. One can only conclude that the lorry drivers stay there during travel for business and stay for not more than one consecutive year. Accordingly, the lorry drivers fall squarely within the definition of "tourist" under Section 2 of the Act.



10. Having so found, the next question for determination is whether the Act applies to Beer Inn. Section 6 of the Act provides that the object and purpose of the Respondent shall be to regulate the tourism sector. The functions of the Respondent are stipulated in Section 7 of the Act. Section (1)(c) provides:
 1. The functions of the Authority shall be to—
 - (c) register, licence and grade all sustainable tourism and tourist-related activities and services including cottages and private residences engaged in guest house services;
11. Section 98 of the Act prohibits any person from undertaking any of the tourism activities and services specified in the Ninth Schedule, unless that person has a licence issued by the Respondent. The Ninth Schedule lists the regulated tourism activities and services. Under the Schedule, Class "A" Enterprises include inter alia hotels and guesthouses. Class "B" Enterprises include restaurants and other food and beverage services.
12. The Respondent asserts that the Ex parte Applicant is operating a guesthouse. It is noted that the Act does not define "guesthouse". The concise Oxford English Dictionary Twelfth Edition defines guesthouse as a private house offering accommodation to paying guests. The Ex parte Applicant has acknowledged that the 8 rooms at Beer Inn occasionally accommodate lorry drivers. In light of this, the Respondent cannot be faulted for concluding, on inspection of the premises, that the Ex parte Applicant is operating a guesthouse.
13. Further, the Ex parte Applicant states that his licence permits the sale at Beer Inn, of local palm wine and beer to between 16 and 60 people. The Act does not make a distinction between beverages. Local palm wine and beer are beverages. Accordingly, Beer Inn which sells these beverages falls within Class "B" enterprises under the Ninth Schedule.
14. Having found as I have that Beer Inn is a guesthouse and that the lorry drivers accommodated at Beer Inn are tourists by definition and that the services offered at Beer Inn fall within the list in the Ninth Schedule, it follows that by dint of Section 98(1) of the Act, the Ex parte Applicant requires a licence issued by the Respondent.
15. The matter before me is a judicial review application. As such, the Ex parte Applicant had the onus of demonstrating that the Respondent's action was tainted in illegality as was stated in *Pastoli v Kabale District Local Government Council & others* [2008] 2 EA 300:

In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.
16. The Court has found that the nature of business conducted by the Ex parte Applicant requires a licence from the Respondent. In the premises, in requiring the Ex parte Applicant to take out a tourism licence, the Respondent acted within its statutory mandate. The Court finds that the Respondent's decision is thus not tainted in illegality and the Ex parte Applicant has failed to discharge the burden placed upon him. Accordingly, his Application cannot succeed.
17. In the end and in view of my analysis and conclusion herein above, it is my finding that the Application herein is devoid of merit and the same is hereby dismissed with costs to the Respondent.

SIGNED DATED AND DELIVERED IN MALINDI THIS 30TH DAY OF JANUARY 2026

M. THANDE

JUDGE

