



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. E007 OF 2021

ERIC KIOGORA MURIGU.....PETITIONERS

VERSUS

NAIROBI CITY COUNTY GOVERNMENT.....1ST RESPONDENT

ACTING GOVERNOR NAIROBI CITY COUNTY

GOVERNMENT.....2ND RESPONDENT

THE NAIROBI COUNTY CHIEF OFFICER COMMERCE

AND INDUSTRIALISATION.....3RD RESPONDENT

THE GOVERNMENT PRINTER.....4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH RESPONDENT

RULING

1. The application dated 5/2/2021 by the respondent prays for an order in the following terms: -

(1) Spent

(2) Spent

(3) Spent

(4) This Honourable Court be pleased to review and set aside the order issued by the Hon. Justice Mathews Nderi Nduma on 1st February, 2021 suspending the Gazette Notice No. 86 of 12th January, 2021 which announced that the 2nd respondent has appointed members of Nairobi City Sub-County Alcoholic Drinks and Licensing Committees and all consequential orders flowing therefrom.

(5) In the alternative, this Honourable Court be pleased to reopen the application dated 18th January, 2021, for canvassing interpartes.

2. The application is founded on facts set out on the face of the notice of motion and supporting affidavit of Lydia Kwamboka, the County City Attorney, the nub of which is that the impugned orders were issued in the absence of the advocates for the respondents herein thus the respondents were denied the right to be heard, contrary to the provisions of Article 50 of the Constitution of Kenya, 2010.

3. That the Advocates who purportedly appeared for the 1st and 3rd respondents were never given instructions by the said Respondents and it is highly suspected that it was the applicant who appointed the said advocates to appear in the matter so as to protect their interest.

4. That the 1st, 2nd and 3rd respondents have a right to be represented by an Advocate of their own choice and this right was infringed upon when an Advocate whom they did not appoint purported to appear for them in the proceedings.

5. That the application is frivolous, and abuse of Court process in that the tenure of the petitioners who were former members of the Nairobi City Sub-County Alcoholic Drinks Control and Licensing expired on 7th of December, 2020.

6. That there was never any appointment of the Petitioners that was valid in law and for that reason their names were never gazetted.
7. The 1st, 2nd and 3rd respondents appointed new members in terms of Section 6 of the Nairobi City County Alcoholic Drinks Control and licensing Act, 2014.
8. That the Court ought not to interfere with an appointment duly made by the mandated authority.
9. That the applicants stand to suffer substantial loss unless the orders issued on 1st February, 2021 are set aside.
10. That the applicants ought to have been given opportunity to respond to the application dated 18/1/2021 pursuant to which the orders of 1st February, 2021 were granted.
11. That the firm of Kithi and Company Advocates received instructions to act for the 1st, 2nd and 3rd respondents on 2nd February, 2021 and entered appearance on 4th February, 2021 and should be allowed to respond to the application.
12. On 19th May, 2021, upon hearing Mwangi Ndegwa for Petitioners, Kago for 1st respondent and Mr. Kithi for 2nd and 3rd respondents and Mr. Odukenya, for the 4th and 5th respondents, the Court directed the petitioner to respond to the application dated 5th February, 2021 within 7 days.
13. The respondents/applicants to file submissions within 3 days of service and petitioner to file submissions within 3 days of service.
14. The matter was then mentioned on 3rd June, 2021, when M/s Katana appeared for Mr. Kithi for the 2nd and 3rd respondents in the absence of other counsel.
15. The Court was informed that the petitioners had not filed and served responses to the application dated 5th February, 2021.
16. M/s Katana informed Court that they had since filed their submissions.
17. The Court made the following orders: -

“No response to the application is received from the petitioners. Ruling on Application dated 5/2/2021 on 29/7/2021. Deputy Registrar to notify the petitioners.”

The ruling was not ready on 29/7/2021 and the Court deferred the Ruling to 23/9/2021.

18. To date no response to the application dated 5/12/2021 by the 1st, 2nd and 3rd respondents has been received from the petitioners.
19. The depositions set out in the Notice of Motion and supporting affidavits in the application have not been controverted.
20. The Court is satisfied that Mr. Gichigo, Advocate who appeared for the 1st, 2nd and 3rd respondents on 1/2/2021, when Mr. Gichigo conceded to the grant of prayer 2 to the Notice of Motion dated 18/1/2021 and the petition to proceed to full hearing on the merits, Mr. Gichigo did not have the mandate of the 2nd and 3rd respondents to make such concession.
21. The Court is satisfied that the 2nd and 3rd respondents were entitled to a hearing before the Court granted the application which did not happen.
22. Accordingly, this Court allows the application dated 5/2/2021, and consequently sets aside the interim orders granted on 1/2/2021 in favour of the Petitioners/Applicants in the application dated 18/1/2021.
23. The parties to proceed with interpartes hearing of the application dated 18/1/2021 and or proceed to prosecute the petition on the merits.
24. Costs in the cause.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF SEPTEMBER, 2021.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Kithi for 2nd and 3rd Respondent/Applicants

Mr. Kago for 1st respondent

Odukenya for 4th and 5th respondents

Mwangi Ndegwa for Petitioners/Applicants

Ekale – Court Assistant.