



Ngeno (Suing on Behalf of Benjamin Rono) & another v Chairperson Bureti Sub County Alcoholic Drinks Regulations Committee & 5 others (Miscellaneous Civil Application E029 of 2024) [2025] KEHC 1206 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION E029 OF 2024
JK SERGON, J
FEBRUARY 26, 2025**

BETWEEN

**ROBERT NGENO (SUING ON BEHALF OF BENJAMIN RONO) 1ST APPLICANT
CAREN CHEPNGETICH 2ND APPLICANT**

AND

**CHAIRPERSON BURETI SUB COUNTY ALCOHOLIC DRINKS REGULATIONS COMMITTEE 1ST RESPONDENT
DEPUTY COUNTY COMMISSIONER BURETI SUB COUNTY KERICHO COUNTY 2ND RESPONDENT
ASSISTANT COUNTY COMMISSIONER CHEBORGEI DIVISION KERICHO COUNTY 3RD RESPONDENT
CHIEF CHEBORGE LOCATION KERICHO COUNTY 4TH RESPONDENT
COUNTY GOVERNMENT OF KERICHO 5TH RESPONDENT
ATTORNEY GENERAL 6TH RESPONDENT**

RULING

1. The applicants filed a notice of motion dated 15th July, 2024 seeking the following orders;
 - (i) Spent.
 - (ii) That pending the hearing and determination of this application, this honourable court do order the 2nd Respondent to release alcoholic drinks belonging to the applicants unlawfully seized and confiscated in white bar and sweetwaters bar respectively at Cheborge Market in



Bureti Sub County, Kericho County on the 8th April, 2024 and be allowed to sell them pending the outcome of the appeal against the decision by the 1st Respondent to reject their application for license renewal.

- (iii) That pending hearing and determination of this application this honourable court do direct the Respondents to allow the applicants to proceed with the process of appeal against the 1st Respondent's decision to reject the license renewal.
 - (iv) That costs of the suit be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit of Robert Ngeno, a human rights defender working as the Executive Director of Kericho Center for Human Rights mandated to monitor, investigate, document and report human rights violations and other forms of social injustice and conduct of public interest litigation. He avers that he wishes to come on record on behalf of business persons at Cherboge Market running white and sweet waters bars respectively pursuant to article 22 (1), (a), (c) and 258 (1) (a) © of the Constitution.
 3. He avers that on 8th April, 2024 the 1st Respondent wrote to the applicants notifying them that their application for license renewal had been declined on grounds purportedly raised by the public in public participation, which grounds they contended and appealed within fourteen (14) days.
 4. He avers that in the same notification letter, they were given up to 15th April, 2024 to clear the stock and close their business premises.
 5. He avers that while the appeal was pending and the notice period subsisted, the 2nd Respondent raided the subject premises, impounded and confiscated alcoholic drinks without notifying them and without court orders or directions.
 6. He avers that the applicants attempts to secure their property have been futile. He avers that unless the instant application is allowed, the applicants will suffer irreparable loss that cannot be cured by monetary compensation.
 7. The 1st, 2nd, 3rd, 4th and 6th Respondents opposed the Applicants' Notice of Motion dated July 15th 2024 and filed the following grounds of opposition;
 - (i) That the 1st Applicant does not have locus standi before the Honorable Court. He does not have authority to act for Robert Ngeno nor does the application raise human rights violations or matters of public interest.
 - (ii) That the 1st Respondent is mandated to issue or reject licenses, as established under section 8 of the Alcoholic Drinks Control Act Cap. 121, which stipulates: "8. There shall be, for every district, a committee to be known as the District Alcoholic Drinks Regulation Committee which shall—
 - (a) issue licenses in accordance with this Act; and
 - (b) perform such other functions as may, from time to time be allocated to it by the Cabinet Secretary."
 - (iii) That the 1st Respondent declined to grant licenses to the Applicants and gave reasons thereof, as mandated under section 10 (4) of the Alcoholic Drinks Control Act Cap. 121.
 - (iv) That after the renewal of the licenses was rejected, the Applicants were required to apply for a provisional license of not more than 3 months to dispose of their stock, but they failed to do so.



- (v) That the Applicants continued to illegally operate without a valid license, contrary to the provisions of Section 4 (1) of the Kericho County Finance Act 2023: “4(1) A person shall not carry out, within the County, any business or service specified in the Schedule without a license issued by the relevant County office.”
 - (vi) That on 8th April 2024, the Applicants were raided for violating section 8 (1) of the [Kericho County Alcoholic Drinks Control Act](#), 2014, which reads: “8. (1) No person shall—
 - (a) manufacture or otherwise produce;
 - (b) sell, distribute or dispose of, or deal with any alcoholic drink in the county except under and in accordance with a license issued under this Act.
 - (2) Any person who contravenes the provisions of subsection (1) commits an offence.”
 - (vii) That the Respondents were authorized to seize the alcoholic drinks as the Applicants were illegally in operation, as provided under section 60 of the [Alcoholic Drinks Control Act](#) Cap. 121 which reads: “During an inspection under this Act, an authorized officer may seize any alcoholic drink or thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened.”
 - (viii) That the Applicants have not discharged the burden of proof that they were lawfully in operation on 8th April 2024, or that they have requisite licenses to sell alcoholic drinks if the court were to allow the orders sought; contrary to Section 40(1) of the [Alcoholic Drinks Control Act](#) Cap. 121, which provides: “40(1) The onus of proving that a person is licensed under this Act shall lie on that person.”
 - (ix) That the Application is seeking aid of the Court to validate an illegality and is otherwise fatally flawed. The Respondents, therefore, urge this Court to dismiss the Application with costs.
8. The 2nd Respondent, the Deputy County Commissioner of Bureti Sub-County being fully conversant with the Application dated 15th July 2024 filed a replying affidavit.
 9. He avers that Benjamin Rono and Caren Chepngetich, the Applicants herein, were licensed to operate alcoholic establishments within Cheborgei Shopping Centre from January 2023 to December 2023.
 10. He avers that on 7th December 2022, the 1st and 2nd Respondents received a petition from members of Cheborgei Community, seeking suspension of liquor licenses operating within Cheborgei Market.
 11. He avers that on 17th January 2024, the Bureti Sub-County Alcoholic Drinks Regulation Committee reviewed the renewal of licenses of 178 premises, wherein the licenses of 124 premises were approved and further that on 8th February 2024, the Bureti Sub County Alcoholic Drinks Regulations Committee, chaired by the 1st Respondent, rejected the application for renewal of licenses filed by various parties, including the Applicants herein, and informed them of the grounds for rejection.
 12. He avers that after rejecting their application for renewal of licenses, the Applicants were advised to seek a 3 months' license to enable them to clear their inventory and close their establishments and that in total disregard to the law, the Applicants neglected to file for the 3 months' license as advised, and continued to sell alcoholic drinks without valid licenses.
 13. He avers that on 8th April 2024, an inspection of the Cheborgei Market by the Security Committee led by the 2nd Respondent discovered that the Applicants were operating without valid licenses and the Applicants fled the scene after they failed to provide a valid license to authenticate their operations



and therefore the 2nd Respondent legally seized the alcoholic drinks found in the Applicants' premises and the raid was booked at Cheborgei Police Station under OB//No. 07/08/04/2024.

14. He avers that the seized alcoholic drinks remain in the 2nd Respondent's custody and shall be used as evidence in proceedings against the Applicants, who operated without a valid license.
15. He avers that the Court cannot restore the alcoholic drinks to the Applicants without participating in an illegality. The Applicants do not have a valid license allowing them to operate and have failed to produce evidence to the same effect.
16. He avers that Robert Ngeno, the 1st Applicant, does not have locus standi to act on behalf of Benjamin Rono and that the Application is an abuse of court process and therefore ought to be dismissed with costs. The Applicants cannot seek the aid of the Court to validate an illegality.
17. At the time of writing this ruling the parties had not uploaded submissions on the Case Tracking System. Having considered the application and responses to the application extensively this court finds that the following issue (s) are ripe for determination whether to release alcoholic drinks belonging to the applicants unlawfully seized and confiscated in white bar and sweetwaters bar respectively at Cheborge Market in Bureti Sub County, Kericho County on the 8th April, 2024 pending the outcome of the appeal against the decision by the 1st Respondent rejecting their application for license renewal and whether this court ought to allow the applicants to proceed with the process of appeal against the 1st Respondent's decision to reject the license renewal.
18. On the issue as to whether release alcoholic drinks belonging to the applicants unlawfully seized and confiscated in white bar and sweetwaters bar respectively at Cheborge Market in Bureti Sub County, Kericho County on the 8th April, 2024.
19. This court has considered the chronology of the events that preceded confiscation of alcoholic drinks belonging to the Applicants. The 1st Respondent declined to grant licenses to the Applicants and gave reasons thereof and that after the renewal of the licenses was rejected, the Applicants were required to apply for a provisional license of not more than 3 months to dispose of their stock, but they failed to do so and continued continued to illegally operate without a valid license when the 2nd Respondent seized and confiscated the alcoholic drinks found in the Applicants' premises and that these are in the custody of the 2nd Respondent to be used as evidence in proceedings against the Applicants, who operated without a valid license. It is against such background that this court finds that ordering for the release of the alcoholic drinks seized and confiscated by the Respondents will be perpetuating an illegality.
20. On the issue as to whether the applicants should be allowed to proceed with the process of appeal of the decision to reject the license renewal, the *Kericho County Alcoholic Drinks Control Act, 2014*, in section 19 provides as follows; (1) Notwithstanding section 17, an applicant whose application for a new licence, to renew or transfer a licence has been refused may within twenty-one days of such refusal appeal against such refusal to Court. (2) An applicant under section 17 who is not satisfied with the decision of the Review Committee may within twenty one days appeal to the High Court. It is clear that the Applicants herein have not fully exhausted the internal dispute resolution mechanism in order to pave way for the appellate process in this court.
21. Consequently, the dated July 15, 2024 is hereby dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.

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J.K. SERGON



JUDGE

In the Presence of:-

C/Assistant – Rutoh

Ojwang for the 1st, 2nd, 3rd & 4th Respondent

No Appearance for the Applicant

