



**Rose Esther Muthoni Wamuiya t/a Paradisco Bar and Restaurant v
County Government of Kiambu & 10 others (Constitutional Petition
E013 of 2024) [2025] KEHC 9631 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E013 OF 2024
DO CHEPKWONY, J
JUNE 24, 2025**

BETWEEN

**ROSE ESTHER MUTHONI WAMUIYA T/A PARADISCO BAR AND
RESTAURANT PETITIONER**

AND

**COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT
DIRECTORATE OF ALCOHOLIC DRINKS CONTROL 2ND RESPONDENT
KIAMBAA ALCOHOLIC DRINK CONTROL AND LICENSING
COMMITTEE 3RD RESPONDENT
SUB COUNTY ADMINISTRATOR KIAMBAA 4TH RESPONDENT
KIAMBU COUNTY COMMISSIONER 5TH RESPONDENT
DEPUTY COUNTY COMMISSIONER KIAMBU 6TH RESPONDENT
COUNTY POLICE COMMANDER KIAMBU 7TH RESPONDENT
SUB COUNTY POLICE COMMANDER KIAMBAA 8TH RESPONDENT
INVESTIGATIONS OFFICER KIAMBAA 9TH RESPONDENT
KARURI POLICE STATION 10TH RESPONDENT
DIRECTOR OF PUBLIC PROSECUTION 11TH RESPONDENT**

RULING

1. In this matter, the Petitioner has filed a Petition and two applications. The first application is dated 2nd May, 2024 wherein the Petitioner is seeking the following orders:



- a. Spent.
 - b. That the Honourable Court be pleased to issue a conservatory order restraining the Respondents whether by themselves, their officers, instructed agents, servants, employees, representatives and or proxies from harassing, intimidating and or persecuting the Petitioner/ Applicant and/or her staff members as well as breaking into the suit premises, restricting access thereon and/or interfering with the Petitioner/ Applicant's operations in any other manner pending the interpartes hearing and determination of this motion.
 - c. That the Honourable Court be pleased to issue a conservatory order restraining the Respondents whether by themselves, their officers, instructed agents, servants, employees, representatives and or proxies from harassing, intimidating and or persecuting the Petitioner/ Applicant and/or her staff members as well as breaking into the suit premises, restricting access thereon and/or interfering with the Petitioner/ Applicant's operations in any other manner pending the interpartes hearing and determination of this motion.
 - d. That the Honourable Court be pleased to issue any further protective reliefs in the Petitioner/ Applicant's favour pending the hearing and determination of this Motion and Petition.
2. The second application is that dated 6th June, 2024 in which the Petitioner seeks the following orders:-
- a. Spent.
 - b. That this Honourable Court be pleased to stay proceedings in Kiambu MCCR E1188 Of 2024 Republic v Rose Esther Muthoni Wamuiya pending the hearing and determination of Constitutional Petition No. E013 of 2024 filed by the applicant on 2nd May 2024.
 - c. That this Honourable Court be pleased to stay proceedings in Kiambu MCCR E1188 Of 2024 Republic v Rose Esther Muthoni Wamuiya pending the hearing and determination of applicant's application dated and filed by the applicant on 2nd May 2024. the said application is slated for mention on 18th June 2024.
 - d. That the Honourable Court be pleased to order the 5th, 6th, 7th, 8th, 9th and 10th Respondents herein to forthwith cause the taking of photographs of the applicant's alcoholic drinks as seized as exhibits from Paradisco Bar and Restaurant on the 26th April, 2024 as listed in the annexed inventory and restore/release the same to the Applicant.
 - e. That in the alternative, the Honourable Court be pleased to find it expedient to order that the 61 of 62 itemised stocks in the inventory and restore/release the same to the Applicant.
3. In response the Respondents filed a Notice of Preliminary Objection dated 28th May, 2024 on the following grounds:-
- a. That the Honourable Court lacks original jurisdiction to entertain this suit and application dated 2nd May, 2024 owing to the doctrine of exhaustion of statutory remedies.
 - b. That the Petitioner/Applicant herein raises the question of liquor licensing which matters are regulated by Kiambu County Alcoholics Drinks Control Act, 2018 and revised in 2022.
 - c. That under Section 65 (1) Kiambu County Alcoholics Drinks Control Act, 2018 and revised in 2022 provides that an applicant aggrieved by the decision of a Subcounty alcoholics Drinks Regulation Committee may appeal to the County Appeals Committee within thirty days of such decision.



- d. That Section 66 (1) Kiambu County Alcoholics Drinks Control Act, 2018 and revised in 2022 provides that there is established the County Alcoholic Drink Appeal Committee and gives its composition of members.
 - e. That Section 66 (2) Kiambu County Alcoholics Drinks Control Act, 2018 and revised in 2022 provided that the County Alcoholic Drinks Appeal Committee shall be responsible for receiving and hearing appeals from the decisions made by any person or committee under this act.
 - f. That Section 66 (2) of Kiambu County Alcoholics Drinks Control Act, 2018 and revised in 2022 provides for the jurisdiction of this court in disputes relating relating to appeals from decisions made by the County Alcoholics Drink Appeal Committee.
 - g. The Petitioner/applicant have failed, ignored and/or neglected to exhaust the alternative means of dispute resolution as provided by the said legislation.
 - h. That the entire suit contravenes the provisions of Article 159 (2) (c) of *the Constitution* of Kenya 2010.
 - i. That in light of the above points of law allowing the applicant to ventilate her case before this Honourable court shall be tantamount to ousting the jurisdiction of the County Alcoholic Appeals Committee which is already operationalised and subsequently legitimately mandated to hear and determine the dispute herein.
 - j. That the parties herein should be referred to the County Alcoholics Appeals Committee through its chairperson for dispute resolution as mandated by law.
4. When the matter came up for Directions on 8th August, 2024, the Petitioner's Counsel indicated to court that the application dated 26th May, 2024 was served upon the Respondents but had not been responded to hence is unchallenged and should be allowed as prayed. He went on to state that what was coming up for directions then is the application dated 10th June, 2024 which counsel urged the court to issue directions on.
 5. The Respondents' Counsel informed the court that they filed a Notice of Preliminary Objection dated 28th May, 2024 challenging the jurisdiction of the court in response to the first application dated 2nd May, 2024 and also filed a Replying Affidavit dated 24th June, 2024 in response to the application dated 10th June, 2024.
 6. The Petitioners' counsel then indicated that the court should give directions on the two applications. He argues that the application dated 10th June, 2024 is very urgent and sought to have prayer No.4 therein issued since the goods are perishable in nature and urged that the Respondents be authorised to take photographs of the same.
 7. The Respondent's Counsel opposed the issuance of any orders on the grounds that the application had not yet been canvassed and he prayed that the court gives them a chance for the preliminary objection to be heard.

Analysis and Determination

8. The court has considered the arguments and sentiments of both parties in respect of the two applications herein and notes that directions have not yet been issued with regard to the disposal of the two applications. Given that the Notice of Preliminary Objection involves issues of jurisdiction of the court which is fundamental for the court before it can take another step in the matter, the court finds



that it cannot issue any orders for the release of the goods attached. The court notes the sentiments of the Petitioners that the goods are perishable in nature but it's view is that the same are quantifiable and their perishability can be ameliorated in damages.

9. Therefore, the Court directs that:-
 - a. The Notice of Preliminary Objection dated 28th May, 2024 be canvassed in priority by way of written submissions.
 - b. The Respondents to file and serve their submissions on the Preliminary Objection within Seven (7) days from the date hereof.
 - c. The Petitioner to file and serve her submissions within seven (7) days of being served by the Respondent.
 - d. Mention on 9th July, 2025 for parties to confirm compliance and take further directions before the Deputy Registrar.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF JUNE, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Ngugi counsel for 1st to 4th Respondents

Mr. Kocel counsel for Petitioner/Applicants

Court Assistant - Martin

