



Kiambu County Alcohol Traders' Welfare Group v The County Government of Kiambu & 2 others (Judicial Review E002 of 2023) [2024] KEHC 4694 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
JUDICIAL REVIEW E002 OF 2023**

FN MUCHEMI, J

APRIL 25, 2024

**IN THE MATTER OF: ARTICLE 2 (1), (4), 3, 10(2), 19(1), (2), (3), 20(1),
27(1), 35(1), 47, 48, 50 & 259 OF THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

**IN THE MATTER OF: THE KIAMBU COUNTY
ALCOHOLIC DRINKS CONTROL ACT, 2022**

BETWEEN

**KIAMBU COUNTY ALCOHOL TRADERS' WELFARE GROUP EXPARTE
APPLICANT**

AND

THE COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT

**KIAMBU COUNTY ALCOHOLIC DRINKS APPEALS COMMITTEE 2ND
RESPONDENT**

**ALCOHOLIC DRINK CONTROL SUBCOUNTY ALCOHOLIC REGULATORY
COMMITTEES 3RD RESPONDENT**

RULING

Brief Facts

1. The ex parte applicant filed these proceedings through Chamber Summons dated 24th November 2023 seeking for leave to apply for judicial review for orders of certiorari to remove into this honourable court and quash the decisions of the respondents which denied its members the 2023 trade licenses



and closed their businesses based on a flawed licencing application procedure. The ex parte applicant seek to apply, in the same proceedings for orders of prohibition to curtail or bar the respondents, their agents, employees, staff or any other person or agency or organization acting on their direction from any form of harassment, arresting, incarcerating, instituting, undertaking and/or proceeding with criminal charges against them and for the orders of mandamus directed to the respondents ordering them to draft and gazette the Kiambu County Alcoholic Control Act Rules and Regulations and operationalize the Alcoholic Drinks Control Fund and account for monies deducted from licenced applicants.

2. The ex parte applicant in the same motion applies for leave to seek for an order of certiorari to quash the decisions of the respondents to undertake the process of 2024 licence processing.
3. The applicant in his motion dated 24/11/2023 was granted leave to apply for judicial review and was directed to file the substantive application within twenty-one days as required by the law. Even before the said application was filed, the respondent upon being served with the orders of the court of the initial motion filed an application dated 1st December 2023 seeking to set aside the orders for leave granted on 27th November 2023. The court set aside the orders for leave granted in favour of the applicant in the initial application and directed that the initial application by the ex parte applicant and the second one by the respondent seeking for setting aside be heard together.
4. In a second application dated 13th December 2023, the ex parte applicant, sought for orders to review the orders of the court made on whose effect was to set aside the orders for leave granted on 24/11/2023 and directions given on 5/12/2023 on the two applications. The court set the three applications for directions on 23/01/2024. On the said date, only the respondent's counsel attended court. The court directed the parties to file submissions on the prayer for leave to operate as stay in the initial application dated 24th December 2023.
5. The respondent filed submissions on the initial application seeking leave and argued on the prayers in the motion substantially although no substantive motion had been filed within 21 days by the ex parte applicant as directed by the court on 27/11/2023. In other words, there was no judicial review proceedings before this court at the time of filing submissions. The court had directed the parties to file submissions only on the issue of leave to operate as stay. However, in the submissions paragraph 11 iii), the respondent submitted on the relevant subject of leave operating as stay. The relevant points were presented as follows: -
 - a. That the applicants are unknown as they did not attach their members list in the proceedings.
 - b. That the said ex parte applicant did not obtain authority from its members to file the application.
6. The applicant in its submissions addressed the subject raising the following points: -
 - i. That the purpose of the leave sought is to put on hold the decisions of the respondent to deny the ex parte applicant trade licences for year 2023 for their alcohol businesses.
 - ii. That the application is arguable and has high chances of success.
 - iii. That the decision denying the applicants licences was arbitral and that no candid explanation was given by the respondent.
 - iv. That the respondent's decision forced the members of the applicant to close their businesses to avoid harassment by the respondent which included arrests.



- v. That the members of the applicants operate on rented premises and risk eviction due non-payment of rents since no income was forth coming the time of closure.
 - vi. Some of the affected members operated on loans which were not being regularly serviced thus raising the risk of the respective banks selling their securities.
7. The ex parte applicant submitted that the procedure to file judicial review proceedings starts with the initial application for leave which serve the purpose of saving judicial time. A number of cases were cited on situations where the court may grant leave to file judicial proceedings.
 8. I have perused the material relied on by the parties herein including their submissions.
 9. It is imperative that the procedure for filing judicial review proceedings provided for by order 53 is:-

53.1

- 1) “No application for an order of mandamus, prohibition or certiorari shall be made unless leave thereof has been granted in accordance with this rule.
 - 2) An application for such leave shall be made ex parte to a judge in chambers and shall be accompanied by a statement setting out
 - 3)
 - 4) The grant of leave under this rule to apply for an order of prohibition for an order of certiorari shall if the judge so directs operate as stay proceedings until the determination of the application, or until the judge otherwise orders”.
10. This court granted leave to operate as stay on 27/11/2023. However, when the respondent brought in an application to set aside the order of leave, the court set aside the orders and directed that the parties submit before the court on the issue of leave operating as stay.
 11. After considering the submissions of the parties on leave to operate as stay, I am of the view that at the time that the leave was granted, this court found the ex parte applicant as deserving of such leave. The respondent has challenged the capacity of the ex parte applicant to sue and argued that no authority was given to it by the members to sue on their behalf. In my view, the said issues ought to have been raised in the judicial review proceedings after the substantive application was filed and served. In my view, the respondent has not shown any sound reason to deny the applicant leave to operate as stay.
 12. For these reasons, I hereby strike out the application of the respondent dated 01/12/2023 for being misconceived and improperly before the court.
 13. However, I have looked at the orders the ex parte applicant seeks to apply for in the yet to come judicial review proceedings, and note that due to passage of time, the applicant may require to review his application, if need be.
 14. But my only duty herein is to deal with the issues of leave to operate stay. Having found that the leave to operate as stay was well considered at the time the orders were issued and having given a chance to the respondent to participate, I hereby reinstate the said orders issued on 27/12/2023. The applicant has 21 days to file and serve the substantive application.



15. It is hereby so ordered.

**RULING DELIVERED, DATED AND SIGNED THIS 25TH DAY OF APRIL 2024 AT
THIKA.**

F. MUCHEMI

JUDGE

