



**Chepyegon t/a Nile Bar & Restaurant & 16 others v Baringo County Government & 4 others
(Judicial Review E001 of 2024) [2024] KEHC 14732 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
JUDICIAL REVIEW E001 OF 2024
RB NGETICH, J
NOVEMBER 21, 2024**

BETWEEN

- ISMAEL CHEPYEGON T/A NILE BAR & RESTAURANT 1ST APPLICANT**
KIPROTICH KEITANY T/A OLBOR BAR & RESTAURANT .. 2ND APPLICANT
HOSEA KIMUTAI T/A TEMBO JOINT BAR 3RD APPLICANT
KABIMOI & ESAGERI 4TH APPLICANT
MOSES CHEPKONGA T/A CAMP SITE BAR 5TH APPLICANT
**MWANGI T NYAGA T/A SECRET ARENA BAR &
RESTAURANT 6TH APPLICANT**
ALEX KURGAT T/A NORMAND BAR 7TH APPLICANT
**SOLOMON RUIRU T/A WASUMBUKILE BAR AND ZION
BAR 8TH APPLICANT**
**STEPHEN NJEHIA T/A BLUE BAR & RESTAURANT AND SIMPLE MLIMA
HILLS BAR 9TH APPLICANT**
GEORGE NJEHIA T/A SUNLIGHT BAR 10TH APPLICANT
MARY WANGARI T/A BOOSTER BAR 11TH APPLICANT
JOSHUA CHEBURET T/A YELLOW BAR 12TH APPLICANT
JACOB CHEROP TOO T/A CLUB VISION BAR 13TH APPLICANT
KENNETH CHERUITOT T/A KENRAH BAR 14TH APPLICANT
DANIEL KERIENYA T/A STAREHE BAR 15TH APPLICANT
SIMON KIPKAZI KOECH T/A SOIN NOBLE ENERGIES 16TH APPLICANT
JOHN NG'ANG'A T/A MWISHO WA LAMI PUB 17TH APPLICANT



AND

BARINGO COUNTY GOVERNMENT 1ST RESPONDENT
THE COUNTY SECRETARY, BARINGO COUNTY 2ND RESPONDENT
BARINGO COUNTY ALCOHOLIC DRINKS CONTROL DIRECTORATE 3RD
RESPONDENT
DRINKS REGULATION COMMITTEE 4TH RESPONDENT
COUNTY COMMISSIONER, BARINGO COUNTY 5TH RESPONDENT

JUDGMENT

1. The Applicants have moved the court vide a Notice of motion application dated 17th April 2024 brought Under the provisions of order 53 rule 1(1), 1(2), 1(4), order 53 rule 3, Order 53 rule 4 and rule 7(2) of the Civil Procedure Rules and section 8 (2) and 9 of the Law Reform Act Cap. 26 laws of Kenya seeking for the following orders;
 - a. An Order Of Certiorari to remove into the honorable court and quash the Decision of the respondents closing the Applicant's bars and liquor shops.
 - b. An Order Of Certiorari to remove into the honorable court and quash the Decision-making process of the respondents that led to the closure of the Applicant's bars and liquor shops.
 - c. An Order Of Prohibition directed towards the respondents, Prohibiting them from disallowing, canceling, revoking, or otherwise interfering with the Applicant's bars and liquor shops and attendant licenses and/or discussing the matters of the applicant's bars and liquor shops without according them an opportunity of being heard.
 - d. AN order of mandamus compelling the respondents to follow the Baringo County Alcoholic Drinks Control Ad, 2014, to the constitution and more particularly Article 47 and the laws made thereunder.
 - e. That this Honourable Court be pleased to grant a Permanent Injunction restraining the Respondents whether by themselves, their agents, officers or whoever from closing the applicant's bars and liquor shops without according them a hearing and reasons for closure.
2. Grounds for the application are that the Applicants are residents of Eldama Ravine and are owners of various bars and liquor shops in Eldama Ravine and in the year 2023, they successfully applied for licenses to run their bars and liquor shops in Eldama Ravine Sub- County in Baringo County and the same was allowed and they run their business peacefully and without any interference from the Respondents.
3. In December 2023, they applied for licence and paid Kshs 1000 for application. On 20th March 2024, the respondents visited the applicant's premises inspected them and were satisfied with the results of the inspections and the applicants promised that they would be issued with their licenses but to their surprise in March 2024, the respondents informed them that their application for renewal of their license to run liquor shops and bars for the year 2024 was declined without stating any reasons and the period of the closure.



4. They aver that the 4th Respondent has insisted that the Applicant's bars and liquor shops have violated the *Alcoholic Drinks Control Act* without any reason nor hearing and without giving us progressive correction; further that although the inspection was conducted, the applicants were not informed of the modalities of the inspections; that they were not given a chance to represent their case and be heard nor were they given notice to do correction; and as a result of respondent's directive, the applicants will be subjected to continuous losses for an unknown period.
5. The applicants aver that the respondents acted unfairly by closing the applicants' bars and liquor shops while licensing other liquor shops and bars yet they bear the same standards and in view of the fact that directive involve closure of many liquor shops and bars that benefit the community at large in terms of employment and loss of business by applicants who use the income to maintain their families and repay loans used to fund their business, public participation ought to have been done as of right.
6. That the Respondents' conduct in the manner it has handled the applicants' application for renewal of their license to operate their businesses smirks of blatant abuse of its statutory mandate by concealment of material facts, unfair administrative action, bias, collusion, and abuse of office as the Respondents are apparently hell-bent to frustrate the business of patriotic and hardworking taxpayers.
7. That the Applicants have approached this court with clean hands with the expectation that their rights as pertaining to his business are well protected; that this case is fit and proper for grant of orders sought and it is in the interest of justice that the Application herein be granted ex-debito justitiae.
8. That the Applicants will suffer irreparable loss and damage unless the same application is allowed.

Response

9. The 1st to 4th Respondents in opposing the Petition filed a replying affidavit sworn by one Dorcas Kibet, the Sub-County Administrator of the 1st Respondent herein. She avers that the Application is premature, misconceived and an abuse of the Honorable Court process.
10. They submit that current Application cannot proceed unless the court grants the Applicants leave to institute judicial review proceedings against the Respondents.
11. Further that the Baringo County Alcoholic Drinks Act 2014 gives the 1st Respondent the mandate to issue license to anyone who wishes to produce, sell, distribute or deal with any alcoholic drinks within Baringo County and a Notice was issued to the members of the general Public and all stakeholders inviting Applications from interested persons for Alcoholic Drinks Licenses for the year 2024.
12. She avers that after the close of Application period, she invited the members of Alcoholic drinks committee to a meeting which was set to be held on 7th March, 2024 at the Sub-County Administrators Board Room to discuss the 2024 Licensing process, shared a list of Applicants, public health report, security report and inspection of premises.
13. She further states that in a meeting held on 7th March, 2024 a list of all the Applicants, public health report and security report was shared to the members and the same was discussed in length. In the meeting, it was noted that the premise of the 1st Applicant was located near a school. Furthermore, the committee noted that some of the Applicants had not met the public health requirements as required by law and the security report presented, the 13th, 9th, 14th, 8th, and 10th Applicants were found to be frequent violators of law posing major security threats in Koibatek. Further in a report presented by Sub-County police commander and presented to the committee, the 9th, 13th, 14th and 15th Applicants contravened Alcoholic drinks Act provisions relating to sale of alcoholic drinks on various dates.



14. That after the list of all Applicants was shared, dates and schedules of public participation were set in Kabimoi, Esageri, and Equator market on various dates between the 13th and 14th of April, 2024 and during the public participation meeting in Kabimoi on March 13, 2024, held at the Chiefs office Ground, residents expressed the need for strict adherence to the law in the issuance of licenses for all bars and restaurants and they also highlighted the importance of closing down bars operating near schools or residential areas, citing concerns about the sale of illicit alcohol and non-compliance with the required opening and closing times as stipulated by the law.
15. Further, the same sentiments were expressed in Public participation meeting held in Mumberes and Esageri where residents apportioned blame to the 1st Respondent for not closing down bars when residents complained which has resulted in rise in the sale of illicit alcohol and youths in the area suffer from drinking dis-orders and addiction which adversely impact on the community.
16. That after public participation, a schedule of inspection to the premises of the Applicant's premises was prepared and inspection was conducted between 20th and 27th April,2024 and based on the inspection, a vetting a report was thereafter prepared with recommendations on whether to grant or deny individual Applicants licences.
17. That the 1st Respondent decisions were communicated by its Secretary to both the successful and unsuccessful candidates. He confirmed that the licenses for the Applicants/Petitioners and other candidates were not renewed due to non-compliance with requirements as stipulated by the Baringo County Alcoholic Drinks Act 2014.
18. That the Applicants license was not renewed for the following reasons:
 - a. The 2nd Applicant license was not renewed for the reason that it is situated within 300 meters near Bethany Academy thus contravening section 14 a and c of Baringo County Alcoholic Drinks 2014, the 3rd Applicant license was not renewed for the reason that it has security issues due to frequent fights, loud music and nuisance and failure to meet public health requirements,
 - b. The 13th Applicant license was not renewed for operating without a license contrary to section 15, 1(e) non-payments of previous for 2021,2022 and 2023.
 - c. The 8th Applicant license was not renewed because the establishment is located in a residential area and public nuisance. The 11th Applicant license was not renewed because of security concerns and failure to meet public health requirements.
 - d. The 6th Applicant license was not renewed because of security and failure to meet public health requirements; the establishment has poor ventilation.
 - e. The 5th Applicant license was not renewed because of security concerns, the establishment
 - f. The 3rd Applicant license was not renewed because of security concerns; the bar was closed during Public participation after numerous complaints from the members of the public.
 - g. The 9th Applicant License was not renewed because the premise is located in a residential area contrary to section 14(1) of Baringo Alcoholic Drinks Act, the Applicant was advised to relocate to another area.
 - h. The 8th Applicants license was not renewed because his premise is located in a public area specifically in stage and after numerous complaints from members of the public.



- i. The 12th Applicant license had initially not been renewed because of failure to comply with Public Health requirements, but it has since been renewed after the Applicant complied with the said requirements.
 - j. The 17th Applicant License had initially not renewed because of failure to comply with Public Health Requirements, but it has since complied and has been issued with license.
19. That the Application and is premature because leave to leave judicial review has not been granted and the Petitioners/Applicants have not exhausted the available Dispute Resolution Mechanisms as provided under the Bingo County Alcoholic Drinks Act 2014.
 20. Further, a party who moves the court seeking the orders sought by the Petitioners/Applicants herein must show to the satisfaction of the Court that his or her rights are under threat of violation; are being violated or will be violated and that such violation or threatened violation is likely to continue unless the sought orders are granted but they have not specified nor demonstrated with reasonable particularity how their constitutional rights have been violated.
 21. That the Petitioner's/Applicant's liquor business premises contravened the rights of the consumers under Article 46 of the constitution specifically vulnerable children under Article 57(d) of the constitution and persons below 18 years from abuse and the general members of the public; and the measures taken by the 1st Respondent were meant to safeguard the interests of the members of the public, public institutions including bus stage and churches and vulnerable children accessed alcohol from the Petitioner's/Applicant's business premises and public interest supersedes private interest and that the Petitioners'/Applicants' interest must be weighed against the safety and interest of the general public and the interest of the members of the public will be highly prejudiced if the orders sought are granted.
 22. That the Petitioner's/Applicants have breached the Constitution of Kenya 2010, the Public Health Act and Baringo County Alcoholic Drinks Act 2014 and allowing them to continue will amount to allowing the them to benefit from an illegality.

Response By 5Th And 6Th Respondent

23. The 5th and 6th in opposing the petition filed a replying affidavit sworn by one Judith Cheruiyot, the Deputy County Commissioner Koibatek Sub County. She averred that on 6th March, 2024, the Deputy President issued a directive for fresh vetting of bars and entities selling alcoholic drinks in the country whereby all alcohol selling entities were required to be shut down for 21 days following death of several people in Kirinyaga County after consuming poisonous alcoholic drinks; and further, on the 7th day of March 2024, there was a presidential directive which led to the issuance of a circular Ref; MOTNA/SEC dated 7th March, 2024.
24. That directive was issued for bar owners to close bars but they defied the directive and continued operating and upon vetting, a decision to close the Applicants' premises herein was arrived at on the ground that the premises were not licensed and secondly that they operated within residential areas.
25. She averred that prior to the said meeting, an inspection of the premises where Applicants operated had been done and a Public Participation exercise conducted to get the views of the local people and it was during the meeting held on 4th April 2024, that the inspection notes of the premises hosting various bars and alcoholic selling joints was reviewed; that after the Meeting to review the approved and disapproved liquor premises and listening to the Appeals of disapproved premises, a Report dated 9th May 2024 was drafted; that the site inspection notes were adopted indicating the Applications for licensing by the Applicants herein had been rejected and reasons given.



26. she avers that all the Applicants herein are well aware of reason for refusal to license their premises and they know the appeal mechanisms and were accorded the opportunity. In conclusion, she averred that the closure was done procedurally after due process was followed; that after inspection of various agencies, a report was tabled at the Committee and those that did not meet the set requirements denied licenses. That the role of the National government was simply to enforce closure of illegally operating bars.
27. The petition was canvassed by way of written submissions. The parties herein filed their respective submissions.

Petitioner's Submissions

28. The Applicants submit that they filed a judicial review application dated 17th April 2024 brought under Order 53 of the Civil Procedure Rules. That in the application, they are seeking leave of the court for an order of certiorari to quash the decision of the respondent to close their bars; an order of mandamus, an order of prohibition prohibiting the respondents from canceling or interfering with the applicants' bars/liquor shops without according them an opportunity to be heard; an order of mandamus compelling the respondents to comply with the Baringo County Alcoholic Drinks Act 2014, *the Constitution* particularly Article 47 among other relief.
29. They attached their business certificates and permits for the year 2023. They restate grounds of application and averments in the supporting affidavit and submit that the respondents had the duty to demonstrate what had changed from the year 2023 when the applicants had their licenses and in the year 2024 when the applicants had a legitimate expectation to continue running their bars only for them to be closed. That the views of the consumers and the proprietors of the bars were not considered. They argued that reasons for closure of bars were too minute and there is nothing wrong with having a bar in a trading center consisting of residences.

1st to 4th Respondent's Submissions

30. The 1st to 4th Respondents submitted that notice was issued to the members of the general public and all stakeholders inviting Applications from interested persons for Alcoholic Drinks Licenses for the year 2024 in Eldama Ravine sub-county Baringo county. They restated averments in the replying affidavit on the process of closure of the bars.
31. That Section 3 of Baringo County Alcoholic Drinks Act provides that the objective and purpose of the Act is to provide and for licensing of alcoholic drinks by the County Government pursuant to Part 11 of the Fourth Schedule to *the Constitution* so as to control production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks in order to; protect the health of the individual in the County in light of the dangers of excessive consumption of alcoholic drinks; protect persons under the age of eighteen (18) years from negative impact on health and social development from exposure to advertisements of alcoholic drinks; protect consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks; protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks; inform and educate the residents in the County on the harmful health, economic and social consequences of the consumption of alcoholic drinks; co adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting; ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks; reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumptions of alcoholic drinks.



32. That from the foregoing, there is no doubt that the Petitioners contravened the Baringo County Alcoholic Drinks Act and *the Constitution* of Kenya, 2010, and that issuing them a license would be perpetuating an illegality. They place reliance in *Republic Versus National Commission On Human Rights Ex-parte Uburu Muigai Kenvatta Misc Civil Appeal No 86 Of 2009*, [2010] eKLR.
33. Further that non-issuance of 2024 licenses to the Petitioners was made with full participation of the stakeholders and the members of the public in compliance with Article 10 and 196 of *the Constitution* of Kenya 2010 and the grant of prayers sought shall highly prejudice the interests of the members of the Public and the vulnerable members of the society.
34. On whether the petitioners exhausted the dispute resolution mechanism before filing the petition, the Respondents are alive to the fact that *the Constitution* of Kenya of Kenya 2010 provides for the Right to Fair Administrative Action under Article 47 of *the Constitution* of Kenya 2010 and Section 90 of the *Fair Administrative Action Act* provides for the Doctrine of Exhaustion. They place reliance in *William Odhiambo Ramogi & 3 Others Vattorney General & 4 Others; Muslims for Human Rights & 2 Others (Interested Parties)* [2020] eKLR.
35. That Section 17 of the Baringo County Alcoholic Drinks Act 2014 provides for review. The Act provides that an applicant whose application for a new licence, to renew or transfer a license has been refused or cancelled may within fourteen days of such refusal, request in writing the review of such refusal to the County Review Committee. The Petitioners had the opportunity to be heard but chose not to utilize it.
36. The Respondents humbly submit that the Petitioners have not demonstrated that they exhausted internal mechanism by appealing the decision to Review Board before filing this Petition and have therefore failed to exhaust internal mechanism.
37. On whether the petitioners are entitled to the orders sought, they submit that having established that the Petitioners' Constitutional rights have not been infringed the Respondents acted lawfully and the Petitioners did not exhaust all the Dispute Resolution Mechanism before filing the instant Petition. They urged this court to find that the Petitioners are not entitled to the orders sought and to dismiss the Petition dated 17th April 2024 with costs.

Analysis And Determination

38. I have considered averments herein and wish to consider whether the applicants have met threshold for grant of prayers sought. There is argument by the respondents that the applicant did not seek leave before filing this judicial review case. Record does not show that leave was obtained before the substantive motion was filed. The applicants ought to have sought leave of court to file Judicial review. I will however proceed to consider prayers in the substantive application for judicial review as parties submitted on the prayers sought.
39. In the case *Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd (Civil Appeal No. 185 of 2001)*. In that case, the Court of Appeal held that:-

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters... The court should not act as a Court



of Appeal over the decider which would involve going into the merits of the decision itself- such as whether there was or there was not sufficient evidence to support the decision."

40. From the foregoing, where a public authority has acted in exercise of its discretion, the Court is only entitled to interfere with the exercise of discretion in the following situations: -
- i. where there is an abuse of discretion;
 - ii. where the decision-maker exercises discretion for an improper purpose;
 - iii. where the decision-maker is in breach of the duty to act fairly;
 - iv. where the decision-maker has failed to exercise statutory discretion reasonably;
 - v. where the decision-maker acts in a manner to frustrate the purpose of the Act donating the power;
 - vi. where the decision-maker fetters the discretion given;
 - vii. where the decision-maker fails to exercise discretion;
 - viii. where the decision-maker is irrational and unreasonable. See Republic vs. Minister for Home Affairs and Others Ex Parte Sitamze Nairobi HCCC No. 1652 of 2004 [2008] 2 EA 323.
41. The Applicant argues that it is irrational for the Respondents to refuse to renew their licenses without according them a fair hearing and therefore denied their right to fair trial as provided by Article 50 of *the Constitution*; further that by failing to give them an opportunity to be heard, the Respondents are in breach of Article 47 of *the Constitution* which guarantees the right to fair administrative action.
42. On the other hand, the Respondents argue that invitations to apply for renewal or new licenses was advertised and members of public were notified to give their views through public participation and those who qualified and those who did not qualify were given notices and the reasons for refusal to renew their licenses.
43. It is trite law that judicial review Court does not extend to considering the substance and merit of arguments made by the parties as doing so will be going beyond the standards set in judicial review as set out in the *Fair Administrative Action Act*. The standards of merit in judicial review set out in section 7 (2) of the Act are as follows:
2. A court or tribunal under subsection (1) may review an administrative action or decision, if-
 - a. the person who made the decision
 - i. was not authorized to do so by the empowering provision;
 - ii. acted in excess of jurisdiction or power conferred under any written law;
 - iii. acted pursuant to delegated power in contravention of any law prohibiting such delegation;
 - iv. was biased or may reasonably be suspected of bias; or
 - v. denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;
 - b. a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;



- c. the action or decision was procedurally unfair;
 - d. the action or decision was materially influenced by an error of law;
 - e. the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
 - f. the administrator failed to take into account relevant considerations;
 - g. the administrator acted on the direction of a person or body not authorized or empowered by any written law to give such directions;
 - h. the administrative action or decision was made in bad faith;
 - i. the administrative action or decision is not rationally connected to-
 - i. the purpose for which it was taken;
 - ii. the purpose of the empowering provision;
 - iii. the information before the administrator; or
 - iv. the reasons given for it by the administrator;
 - j. there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
 - k. the administrative action or decision is unreasonable;
 - l. the administrative action or decision is not proportionate to the interests or rights affected;
 - m. the administrative action or decision violates the legitimate expectations of the person to whom it relates;
 - n. the administrative action or decision is unfair; or
 - o. the administrative action or decision is taken or made in abuse of power.
44. In the case of Court of Appeal in *Suchan Investment Limited vs. Ministry of National Heritage & Culture & 3 others*, (2016) eKLR the court of appeal stated that even though Article 47 of *the Constitution* as read with the grounds for review provided by section 7 of the *Fair Administrative Action Act*, reveals an implicit shift of judicial review to include aspects of merit review of administrative action, the reviewing court has no mandate to substitute its own decision for that of the administrator or to usurp the roles of the administrator.
45. In respect to the application herein, Article 47 of *the Constitution* provides as follows: -
1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”
46. In addition, section 4 (3) and (4) of the *Fair Administrative Action Act* lays down the procedure to be adopted by decision makers as follows:
3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-



- a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine or where applicable; or
 - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.
4. The administrator shall accord the person against whom administrative action is taken an opportunity to-
- a. attend proceedings, in person or in the company of an expert of his choice;
 - b. be heard;
 - c. cross-examine persons who give adverse evidence against him; and
 - d. request for an adjournment of the proceedings, where necessary to ensure a fair hearing.”
47. At the core of the duty to act fairly and the requirement of fairness is the need to ensure that a person affected by a decision has been given an opportunity to make representations before it is taken, so that he or she has the chance to influence it. This requirement is what informs the key procedural steps set down by the law of giving of notice of an administrative action, and provision of the evidence that will be relied upon during that administrative action. The question of whether failure to observe any of these steps renders the decision making by an administrator unfair, will depend on how it affects a party’s ability to make representations.
48. From the averments and documents attached herein, the applicants applied for renewal of licences. It is evident that inspection was done in their premises upon objections being raised and reasons given for failure to renew licence for each premises as per averments captured above in paragraph 18 above. There is confirmation that reasons were communicated to the applicants. The applicants had the option of seeking review of the committee’s decision before the appeals committee but instead opted to file this judicial review matter before exhausted internal mechanism provided contrary to Section 17 of the Baringo County Alcoholic Drinks Act 2014.
49. The respondents herein accorded the applicants herein, interested parties and all stakeholders and the general members of the public an ample notice and opportunity to participate and raise their concerns before taking any administrative action. The intention of the County *Alcoholic Drinks Control Act* was to protect consumers under Article 46 of *the Constitution*.
50. Further public interest concerns is one of the reasons for denial of judicial review reliefs. The court has to weigh the interest of the applicants against public interest and public interest will prevail over any private interests of the ex-parte Applicants as was held in *Republic -vs-National commission on Human rights Ex-parte Uhuru Muigai Kenvatta misc Civil appeal no 86 of 2009*, [2010]eKLR.



51. From averments and documents herein, public interest was demonstrated by the overwhelming objection by the members of the public recorded in the minutes of the of the public participation meetings held on between the 13th and 14th of April, 2024. From the foregoing I see no merit in the application herein

Final Orders: -

1. Application dated 17th April 2024 is hereby dismissed
2. Each party to bear own costs

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 21ST DAY OF NOVEMBER 2024.

.....

RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis

Mr. Nyagaka for petitioners

Ms. Kaimogul for 1st to 4th Respondents

