

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT VUGA

CIVIL APPEAL NO. 12 OF 2012

FROM ORIGINAL DECREE IN CASE NO. 01 OF 2012 of the Bodi ya Vileo

Mwanakwerekwe – Zanzibar

GREEN VIEW D/BOVU (MBAWALA) -----

APPELLANT

VERSUS.

MUSSA MAKUNGU IS-HAQ AND

4 OTHERS -----

RESPONDENTS.

Date of Last Order 29/08/2012

Date of Judgment 27/09/2012

J U D G M E N T .

RABIA H. MOHAMED, J.

The Appellant, Green View Daraja Bovu (Mbawala) applied for a license of the Licensing court as shown by the form signed by him on 6th December, 2011. The application was objected orally by Mussa Makungu Is-haka, Said Omar Hamdan, Said Nassor Ali, Mula Hassan Hussein and Muumini Ali Juma whom were represented by the learned advocate Abdul-azia Hamid. The Licensing court rejected the application in its judgment which was delivered on 5th April,

2012. The Appellant was dissatisfied with this decision and has preferred this appeal.

The Appellant who was – self represented lodged a thirteen point Memorandum of Appeal praying for a Judgment and Ordrs as follows:-

1. Kuikubali rufaa hii na kutamka kuwa amri iliyotolewa na Mahkama ya Vileo ya tarehe 5/4/2012 ni batili na kuibatilisha amra moja.
2. Kuikubali rufaa hii na kutamka kuwa Mahkama haikukaa kwa mujibu wa sheria.
3. Mahkama itoe amri Muomba Rufaa apewe Leseni ya muda mpaka pale ombi la Muomba Rufaa la kurenw leseni katika kikao maalum cha Mahkama ya Vileo litakaposikilizwa na kutolewa uamuzi kwa kufuata sheria.
4. Gharama za Rufaa hii zilipwe na Waombewa Rufaa.
5. Amri nyengine halali kwa faida ya Muomba Rufaa.

Hearing of the appeal was through Written Submissions.

The Appellant, on the first ground of appeal contended that the licensing court had its first meeting on 15th March, 2012 and gave its decision on 5th April, 2012 contrary to the requirements set in section 45 of the Liquor Decree Cap. 163 which gives a mandatory requirements for the court to have its meeting in the month of November after a one month notice been given in the gazette for the purpose of hearing the application for the granting, renewal, transfer or removal of license.

In arguing second ground of appeal the appellant has told the court that he did not apply for interim license at the licensing court. He told the court that he applied for renewal whereby the proper sections in that purpose was sections 45 and 61 of Cap. 163. In determining the application filed by the Appellant the licensing court had its meeting under section 60 (1) (2) of Cap. 163 which is against the law based on the application itself.

In relation to the third and fourth grounds of appeal the Appellant has submitted that the licensing court erred in holding its meeting under section 60 (1) (2) of Cap. 163 at the same time following the procedure set under section 61 and 62 of the same Decree. He continued submitting that section 60 (1) (2) of Cap. 163 does not gives a room for any person to make objection in an application for on interim license. He also told the court that the court erred in not issuing a notice

in the Government Gazettes as required under the law in the month of November.

Learned Advocate Abdul-Aziz for the Respondents/Objectors strongly opposed the appeal. In relation to 1st, 2nd, 3rd and 4th ground of appeal advocate Abdul-Aziz submitted that the appellant is raising the issue of the legality of the court and its Chairman at the Appellate level suggesting that the licensing court did not have the jurisdiction to entertain the application.

On the issue of notice not to be published in the Government Gazette, learned advocate Abdul-Aziz has conceded that the literal interpretation of the sections mentioned by the appellant in the 1st, 2nd, 3rd and 4th ground of appeal provides for mandatory requirement to issue a notice in the gazette for purpose of hearing the applications. He continues submitting that even though the notice was not issued in the gazette, in the month of November, it does not nullify the hearing of the application. He submitted further that the notice was in fact issued for the parties to appear to the court to proceed with the hearing of the application.

To begin with section 45 of the Liquor Decree Cap. 163 provides for the meeting of the said court, which shall be in the month of November of year. This section also requires a one month's notice to be given in the Gazette for the purpose of

hearing application for granting, renewal, transfer or removal of licenses. This section reads as follows:-

"45. The licensing court shall, in the month of November of each year hold a meeting, of which one month notice shall be given in the Gazette, for the purpose of hearing application for granting, renewal, transfer or removal of license".

Section 45 must be read together with section 61 of the same Decree. This section provides as to when the application for licenses has to be made. Section 61 provides for the Applicant to make his application in one of the form prescribed in that behalf not later than seven days after the date of the publication of the notice referred to in section 45. This section also contain the proviso in situation where applications are not made in due time but within seven days after the prescribed period.

Applicant/Appellant made his application by filling in the form as required. This form was signed by him on 6th December, 2011. He attached with his application form among others, the bar license which expired on 31st December, 2011. Under section 45 the court was supposed to have its meeting in November. According to the Appellant's submission, he made his application following the procedure set in section 45 of the Liquor Decree, but the Licensing

court mixed the said procedure with that of section 60 (1) (2) of the Liquor Decree, which provides a special meeting. This section reads:-

" 60 (1) A special meeting of the Licensing court may be held, subject to three weeks' notice thereof being published in the Gazette, and the posting of notice referred to in section 62, on the application of any person desirous of obtaining an interim license upon payment of a fee of forty-five shillings.

(2) Any license granted at any special meeting of the licensing court shall continue in force only until the close of its annual meetings"

According to section 60 above cited, special meeting is subject to three things. First a three weeks' notice has to be published in the Gazette, second its for an application of obtaining interim license and third the license granted from this meeting will continue to be in force until the close of the annual meeting.

The word "interim" has been defined in the Black's Law Dictionary 8th Edition to mean.

"Done, made or occurring for an intervening time; temporary or provisional"

This means, the application under section 60 does not relate to renewal of license, transfer or removal of license. It concerns with the granting of

Temporary License to the application that happened after the close of annual meeting. For the said reason the Licensing court erred in law in having its meeting in the month of March under section 60 of Cap. 163.

Having reached this point I hereby quash the decision of the Licensing court but depending on the nature of the application giving rise to this appeal I cannot order the matter to be remitted to the Licensing court to be tried afresh. I also find that the 1st to 4th ground of Appeal are enough to dispose this appeal, therefore I do not find the need of discussing the remaining grounds of appeal. In the event this appeal is hereby allowed.

Sgd: Rabia H. Mohamed

Judge

27/09/2012.

Order: This judgment was read this 27th September, 2012 in the presence of the Appellant and 2nd and 4th Respondent.

Sgd: Rabia H. Mohamed

Judge

27/09/2012.

I hereby certify that this is a true copy of the Original.

Sgd. **GEORGE J. KAZI**

REGISTRAR

HIGH COURT

ZANZIBAR.

/Maulid: