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LEGAL NEWS

26 April 2024



High Court of Zanzibar Declares section 33(1) (a) of the Liquor Control Act Unconstitutional

On 4 February 2024, the High Court of Zanzibar (the Court) declared section 33(1)(a) of the Liquor Control Act (LCA), Act No. 9 of 2020 unconstitutional and void ab initio for contravening articles 12(1),(2);13(1); 21(3); and 22(1) of the Constitution of Zanzibar. The refusal of importation of liquor by the Authority was declared illegal, ultra vires, and null and void. Remarkably, the Court during trial quotes the insights of the Late Judge Mwalusaya on the right to work.

Background of the Case

The petitioner is a prominent business entity dealing in various quality products within the municipality of Unguja, including importation of liquor to Zanzibar. The petitioner raised a claim on the right of businessmen to do business fairly. The petitioner's concern was that, the LCA denies businessmen freedom for fair competition and promoting trade and commercial activities. The petitioner was moved to file this petition seeking the following declaratory orders: (a) section 33 (1)(a) (b)(c)(d), (2) and (3) of the LCA of the Laws of Zanzibar be declared unconstitutional'; (b) the Court be pleased to uphold section 43(1) and (2)(a)(b)(c)(d)(e) of the Fair Competition and Fair Consumer Protection Act (FCF CPA) against the first and second respondents following their refusal of a licence for liquor importation.

Arguments Raised by Parties

During the trial, the Petitioner argued that, according to article 12 of the Constitution of Zanzibar, all persons are equal before the law and that the law should not be discriminatory on grounds of nationality, tribe, gender, place of origin, political orientation, colour, religion, etc and that the Constitution understands that work is the source of wealth and wellbeing to all people, and that all persons have a duty to participate in voluntary and productive work.

The petitioner further submitted that, section 33(1)(a) of the LCA grants liquor import permit to Zanzibaris only. He claimed that, any other person of any nationality is restricted from being granted such permit.

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ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

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He, therefore, argued that the provision in question clearly offends article 12(5) of the Constitution. He stressed further that, section 33 of the LCA provides for unequal treatment of people from other parts different from that accorded to Zanzibaris.

In addition, he contended that section 33(1) (a) of the LCA promotes favouritism which offends article 10(e) of the Constitution of Zanzibar. Therefore, he maintained that section 33 of the LCA is discriminatory and thus unconstitutional. The petitioner argued further that section 33(1) of the LCA offends articles 21(3) and 22(1)(a)(b) of the Constitution on the right to work by restricting the number of liquor importers to three only. He submitted further that, he is aware that individual's rights are not absolute, but any limitation or restriction of fundamental rights must be lawful and must serve a legitimate purpose.

The respondent on the other hand vehemently opposed what the petitioner submitted on all issues. He pointed out the principles developed from the judicial pronouncements regarding the unconstitutionality of the legislation, which the respondent argued should guide the Court in determining this matter.

The respondent stated that, the impugned legislation falls within the parameters of article 24 of the Constitution of Zanzibar and, therefore, it is constitutional notwithstanding that it may violate the individual's basic rights. He further maintained that, the legislation fits squarely with the provisions of article 24 of the Constitution, in that, it could be construed as being wholly for ensuring the interests of defence, public safety and public order.

Determination of Issues and Decision of the Court

For the Court to fairly determine the case, three issues were raised: (i) Whether section 33(1)(a)(b)(c)(d), (2) and (3) of the LCA contravenes the Constitution of Zanzibar, 1984 as amended; (ii) Whether section 33(1)(a)(b)(c)(d), (2) and (3) of the LCA violates section 43(1) of the Fair Competition and Fair Consumer Protection Act (FCF CPA); and (iii) what remedies are available to the parties.

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The Court in determining the case observed that the LCA controls and regulates the importation, warehousing, sale, delivery and consumption of liquors and other similar matters. In contrast, the FCFCPA was enacted to promote and protect effective competition in trade and commerce; protect consumers from unfair and misleading market conduct; and provide for other similar matters. Thus, wherever the question of fair competition arises, the FCFCPA becomes a specific law for that purpose. Similarly, wherever the question of controlling liquor arises, LCA is the specific law in that area. Thus, the Constitution and FCFCPA make it illegal for businesses to act together in a way that limits competition or hinders other businesses from entering the market. Thus, the Court found that any legislation which has provisions that are inconsistent with the provision of the FCFCPA will not only lack force of law but will also contravene article 10 (d) of the Constitution.

Apparently, the Court also rang a bell as a remainder to the community and Authority on what freedom of business really looks like by linking both the right to life, on the one hand, and the right to property on the other. It concluded that there is a discernible relationship between this freedom and the right to work.

The Court also commented on restriction on the number of people who want to exercise their right and freedom to do business in liquor importation with a limit of only three people. The LCA does not contain any provision that limits the quantity of liquor to Zanzibar; that is to say, for the three licensed importers, the sky is the limit; they can import any quantity of liquor they can, regardless of the market demand.

The Court held that the provisions of section 33 of LCA on restriction of number of importers and eligibility for liquor importation license is inoperative and inconsistent with the provisions of FCFCPA and the Constitution of Zanzibar, hence a nullity in law.

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Copy of the Judgment of the Court can be accessed by [clicking here](#)

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