

Decision to regulate casinos business hours upheld

In public interest, the High Court ruled that the casinos schedule shall be regulated to protect would-be weak and compulsive members of society from exploitation through addiction.

This was after the chairman, secretary and treasurer of the Association of Gaming Operators Kenya (AGOK), who had sought an order of certiorari to quash the decision of the Betting Control and Licensing Board, lost their application.

One of the issues discussed at the meeting of the Betting Control and Licensing Board held on December 15, 2004, was operating hours for public gaming premises and it was resolved that with effect from May 1, 2005, the operating time for gaming premises would be 12 noon to 4am for Nairobi and upcountry while the Coastal region would be 11am to 5am.

The applicants argued that they were not consulted prior to the board taking the decision to change the terms of operating casinos, which was contrary to the rules of natural justice as they were denied the right to be heard.

They also alleged that the decision was taken arbitrarily and that the board acted in excess of its statutory powers in regulating operating business hours for gaming premises. They also contended that the decision was punitive to the gaming industry as it denied the public the right to freely pursue their economic, social and cultural development.

In opposing the application, the Betting Control and Licensing Board contended that at the time it made its decision on December 15, 2004, the association was not registered. The association had therefore no legal right to be consulted on the matter as of December 15, 2004.

The board also stated that all casinos were invited for the full board meeting on December 15, 2004, and that all casino operators attended as evidenced by the minutes of the day. They made their contributions and none raised objection nor was there indication that their association had been left out.

That after the consultations, the board made the decision to extend and harmonise the hours of operation of the casinos in terms of paragraph 8 of the circular of January 13, 2005. According to the board, they acted fairly and reasonably in the circumstances.

The board further stated that Section 46 of the Betting Control and Licensing Board Act gave it the power to regulate the operations of the gaming premises. It added that they always regulated the timings of the casinos in order to regulate the industry in the interests of both casino operators and the public at large.

The court found that applicants have never been denied a hearing and rules of natural justice were not flouted at all. On the issue of whether the board acted in excess of its power, the court stated that under Section 46 of the Act, the board has the discretion to license public gaming premises. This was not the first time the board was dealing with the issue of regulation of the shedule. The board was merely changing the operation hours that had been in existence.

The court held that the law empowered the board to regulate the timing of gaming premises. As correctly submitted by the board, the public interest would require that the timings of the casinos be regulated to protect would-be weak and compulsive members of society from exploitation through addiction which may result in lots of time spent in gambling which would have negative economic, social and cultural effects in our country.

The court ruled that casinos could not be left to the whims of

free enterprise hence a measure of control was necessary, which does not amount to prohibition. As a result, the application was found to be without any merit and was dismissed.