



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT HOMABAY

ELC CONSTITUTIONAL PETITION NO E001 OF 2022

SAMUEL O. NYAUKE.....PETITIONER

VERSUS

THE HOMABAY SUB-COUNTY ADMINISTRATOR.....1ST RESPONDENT

OFFICER COMANDING POLICE DIVISION-HOMA-BAY2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

ERNEST BIN AMITO.....4TH RESPONDENT

JOINT BASE NAVA ENTERPRISES LIMITED.....5TH RESPONDENT

THE DIRECTOR GENERAL NATIONAL

ENVIRONMENT MANAGEMENT AUTHORITY (NEMA).....6TH RESPONDENT

RULING

1. The Petitioner's application by way of Notice of Motion dated **10th February 2022** and duly filed herein on **15th February 2022** is for inter-partes hearing today. The same is seeking orders, inter, alia, hearing of the application at the site of the nuisance, namely **LR No. Kayada/Kotieno Katuma "A"/2991** and interim orders in quo suspending any form of music as to be played by the 5th Respondent thereon.
2. The 5th respondent through M/s Oluoch Amma and Co. Advocates opposed the application by grounds of opposition dated **17th February 2022** and the supporting affidavit annexed thereto.
3. The Petitioner has sought to withdraw the application to pave way for the hearing of the Petition by way of written submissions.
4. Mr. Oluoch Ammon, learned counsel for the 5th respondent and Mr. Robert Ochieng learned counsel for the 4th respondent and holding brief for Mr. Joseph Maina, learned counsel for the 6th respondent, have no objection to the Petitioner's prayer.
5. In the premises, I find the Petitioner's prayer merited.
6. Thus, pursuant to **Order 25 Rule 1 of the Civil procedure Rules, 2010**, the petitioner's application dated **10th February 2022** and duly filed in this court on **15th February 2022**, is hereby marked as withdrawn. Costs be in the cause.
7. I applaud the petitioner, learned Counsel for the 4th, 5th and 6th Respondents for having facilitated prompt and fair determination of the application in consonant with **Article 159 (2) (b) and (c) of the Constitution of Kenya, 2010 and section 3 of the Environment Land Court Act, 2015 (2011)**.
8. It is further ordered and directed that this Petition dated 2nd February 2022 and filed in court on **3rd February 2022**, be heard by way of written submissions.
9. The Petitioner's submissions dated **2nd February 2022** and filed herein on **2nd February 2022**, hereby deemed duly filed and served on the 4th, 5th and 6th respondents. The same be served on the other respondents before the close of business today.

10. The respondents to file and serve their submissions within seven (7) days from this date.

11. The petitioner to file further or supplementary submissions, if any, within two (2) days from the date of service of the respondents' submissions.

12. The Petition is fixed for **2nd March 2022** for purposes of submissions and for directions.

13. It is so ordered.

G.M.A ONG'ONDO

JUDGE

Present

1. Mr. Ammon Oluoch, learned counsel for the 5th respondent.

2. Mr. Nyauke, learned counsel, the petitioner

3. Mr. Robert Ochieng learned counsel for the 4th respondent as well as holding brief for learned counsel Mr. Joseph Maina for the 6th respondent.

4. Okello, court assistant.

DATED AND DELIVERED AT HOMA BAY THIS 22ND DAY OF FEBRUARY 2022.

G.M.A ONG'ONDO

JUDGE