



Ngugi v Karanja t/a Starshine Klub Q West Keg Bar Starshine Klub Q West & 3 others (Environment and Planning Civil Case 2 of 2023) [2025] KEELC 3523 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3523 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING CIVIL CASE 2 OF 2023
AA OMOLLO, J
MARCH 6, 2025**

BETWEEN

RAPHAEL MURIITHI NGUGI PLAINTIFF

AND

**DSMURL MBUGUA KARANJA T/A STARSHINE KLUB Q WEST KEG BAR
STARSHINE KLUB Q WEST 1ST DEFENDANT**

ALCOHOLIC DRINKS AND LICENCING BOARD 2ND DEFENDANT

NAIROBI CITY COUNTY 3RD DEFENDANT

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY 4TH
DEFENDANT**

RULING

1. The Plaintiff/Applicant filed a Notice of motion dated 17th May 2024 supported by an affidavit sworn by Raphael Muriithi Ngugi on the same date seeking for the following orders;
 1. Spent
 2. That this Honourable Court do vary, set-aside and or review its ex-parte orders issued on the 21st of November 2023 striking out Samuel Mbugua Karanja from the proceedings herein.
 3. That this Honourable Court do issue an order compelling the 2nd Defendant to provide before this Honourable Court registration & ownership details of Starshine Klub Q, West Keg Bar Starshine Klub Q-West in the subject residential area.



4. That an order do issue directing Safaricom Plc to provide within (7) days all identification documents and or forms used for registration of till numbers 8469356 for Starshine Klub Q.West Keg Bar Starshine Klub Q-West.
5. That this Honourable Court do issue any other Orders in the furtherance of justice and fairness
6. That cost of this Application be provided for.
2. The motion was on the grounds that the Applicant is the proprietor of the Apartment developed on LR. Nos 14847/178 which are mainly used for residential purposes and he filed the application dated 1st September 2023 seeking interim injunctive orders against the 1st Defendant which were issued on 18th October 2023 pending hearing and determination of the suit.
3. The court also gave directions that the matter be placed before the Deputy Registrar for pre-trial on 23rd October 2024. On the said date, Plaintiff's Advocate appeared before DR Vincent Kiplagat as Hon.Judith Omollo who the matter was cause listed before was not available. The file could not be traced thus the DR directed that the matter be mentioned again on 30th October 2024 before him but still the file was not available.
4. The Applicant contended that he found out that the matter was proceeding before this court with the 1st Defendant having filed an application dated 30th October 2023 seeking that the name of Samuel Mbugua Karanja be struck out from the proceedings among other orders that were issued ex-parte on 21st November 2023. That the injunctive orders issued on 18th October 2024 against the 1st Defendant had already been served upon him, and the said orders had not been set aside, varied or reviewed by the court.
5. The affiant stated that the application by the 1st Defendant was meant to mislead the Court, for instance the allegation that Samuel Mbugua Karanja was a frequent reveller in the club in subject yet he is the recipient of the monies paid to till Nos. 8469356 and 8469354. Thus the ex parte orders issued ought to be set aside.
6. He further stated that the National Environment and management Authority inspectors visited the 1st Defendant that operates in a residential Area contrary to Nairobi City County by-laws and ascertained that the noise from the 1st Defendant is in excess of the noise levels set in the First Schedule of the Environment Management Coordination (Noise and Excessive Vibration pollution control) Regulations of 2009. Accordingly, they were instructed to stop operations and comply with the improvement notice issued by its Environment inspectors on 13th October 2023 and submit an Environment Impact Assessment (EIA) report.
7. He also stated that the Applicant wrote to the 2nd Defendant on 4th March 2024 to ascertain the 1st Defendant's registration details who upon checking their records established that they did not exist thus there is a reason to believe that they are operating illegally.

There was no response to the application filed that was available on record.

Analysis and Determination:

8. The Applicant sought for orders compelling the 2nd Defendant to provide before this Court registration & ownership details of Starshine Klub Q.West Keg Bar Starshine Klub Q-West in the subject residential area and also an order directing Safaricom Plc to provide within (7) days all identification documents and or forms used for registration of till numbers 8469356 for Starshine Klub Q.West Keg Bar Starshine Klub Q-West.



9. Order 51, rule 15 provides that the court may set aside an order made ex parte and in the case of PMM v JNW [2020] eKLR, the relied in the case of Philip Ongom, Capt vs. Catherine Nyero Owota Civil Appeal No. 14 of 2001 [2003] UGSC 16 (20 March 2003) that held that,
- “in setting aside ex parte orders, the court must be satisfied of one of two things, namely, either that the respondent was not properly served with summons or that the respondent failed to appear in court at the hearing due to sufficient cause.”
10. The Plaintiff/Applicant only deposed on the activities that took place before the Deputy Registrar but he has not denied that the email address provided in the affidavit of service used to serve the impugned application does not belong to his advocate on record. However, the court can always use discretion even where service was proper to set aside an ex parte order when sufficient cause has been shown. The claim was hinged on the alleged activities of the 1st Defendant and so the non-participation by the Applicant deprived him of the opportunity to contest the orders sought.
11. Beside asking the court to review the order that struck out the name of the 1st Defendant from these proceedings, in prayer 3 and 4 of the motion, he is seeking for orders that would provide evidence linking the 1st Defendant to the club that is said to be causing nuisance within the neighbourhood. Therefore, it is my considered opinion that it is premature to return the 1st Defendant to the case before the Plaintiff has obtained affirmation that he is the person operating the business.
12. In the circumstances, the application is allowed on terms that I do grant prayers 3 and 4 of the motion so that the Plaintiff is afforded an opportunity to establish the connection between the club in question and Samuel Mbugua Karanja. The parties mentioned in the said prayers/order shall provide the information requested within a period of 14 days after service of the order upon them.
13. Further, it is ordered that in the event the documents are in the name of the 1st Defendant, then prayer 2 of the motion stands allowed. On the other hand, if the documents provided by the 2nd Defendant and Safaricom, then prayer 2 of the motion shall stand dismissed. The Plaintiff/Applicant to meet respective costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

A. OMOLLO

JUDGE

