



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kangwana & 5 others v Temple Point Resort Limited & 6 others; Athman
(Chair of the Watamu Association) (Interested Party) (Environment and Land
Petition E010 of 2024) [2025] KEELC 5933 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5933 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT AND LAND PETITION E010 OF 2024

EK MAKORI, J

JULY 3, 2025

**IN THE MATTER OF ARTICLE 10, 19, 28, 29, 35, 40, 42, 69, 70, AND 232 OF THE
CONSTITUTION OF KENYA**

**AND IN THE MATTER OF THE ENVIRONMENT AND COORDINATION (NOISE
AND EXCESSIVE VIBRATION POLLUTION) (CONTROL) REGULATION, 2009**

AND

**IN THE MATTER OF SECTION 7,9,87,101,102,103,142,144 & 147 OF THE
ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT (EMCA)**

AND

**IN THE MATTER OF KILIFI COUNTY LIQUOR CONTROL
ACT, SECTION 8, 11, 14, 31, AND SECTION 47(1) (C)**

AND

**IN THE MATTER OF PART IV AND V OF KILIFI COUNTY
ENVIRONMENTAL (REGULATION AND CONTROL) NO. 17 OF 2016**

AND

**IN THE MATTER OF SECTION 36,79,80,87, AND 102 OF THE WILDLIFE
CONSERVATION AND MANAGEMENT ACT 2013, CAP 376, LAWS OF KENYA**

AND

**IN THE MATTER OF WATAMU MARINE PROTECTED
AREA (WMPA) MANAGEMENT PLAN 2016-2026**

AND

**IN THE MATTER OF SECTIONS 98, 100, 101, 102, 104,111, 112, 117, 119, 9TH
SCHEDULE, PART II AND PART III OF THE TOURISM ACT, CAP 381 OF 2011**



AND

IN THE MATTER OF RULE 16 (2) TOURISM REGULATORY AUTHORITY REGULATIONS

BETWEEN

MR JARED B KANGWANA 1ST PETITIONER
MRS TABITHA KANGWANA 2ND PETITIONER
MR RICHARD BRADLEY 3RD PETITIONER
MRS DEBORAH BRADLEY 4TH PETITIONER
MR MAURO SAIO 5TH PETITIONER
MRS MAURO SAIO 6TH PETITIONER

AND

TEMPLE POINT RESORT LIMITED 1ST RESPONDENT
LICHTHAUS BAR & RESTAURANT LIMITED 2ND RESPONDENT
THE COUNTY GOVERNMENT OF KILIFI 3RD RESPONDENT
KILIFI COUNTY DIRECTORATE OF BETTING & LIQUOR
CONTROL 4TH RESPONDENT
THE KENYA WILDLIFE SERVICE 5TH RESPONDENT
THE TOURISM REGULATORY AUTHORITY 6TH RESPONDENT
THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 7TH
RESPONDENT

AND

SHARIFF ATHMAN (CHAIR OF THE WATAMU
ASSOCIATION) INTERESTED PARTY

JUDGMENT

1. By a Petition dated 1st July 2024, the Petitioners seek the following reliefs:
 - a. A declaration that the 1st and 2nd Respondents have grossly infringed the Petitioners' and the residents' economic and social rights under Article 42 (d) and 70 of *the Constitution* to a clean and healthy environment by subjecting the Watamu residents to extreme noise pollution in excess of the permissible level.
 - b. A declaration that the 2nd Respondent has grossly infringed the Petitioners' and the residents' economic and social rights under Article 42 (d) and 70 of *the Constitution* to a clean and healthy environment by subjecting the Watamu residents to emission of light and flashes all night which causes sleep disorders, depression, anxiety, stress and fatigue.



- c. A declaration that the 3rd to 7th Respondents have failed to carry out their constitutional and statutory regulatory oversight by failing to prevent the 1st and 2nd Respondent from infringing the Petitioners' and Watamu residents' economic and social rights under Article 42 (d) and 70 of *the Constitution* to a clean and healthy environment by subjecting the Watamu residents to extreme noise pollution in excess of the permissible level and emission of light and flashes all night from Lichthaus Bar and Restaurant which causes sleep disorders, depression, anxiety, stress and fatigue to the neighbors.
- d. A declaration that the acts of the 2nd Respondent, its agents or servants, in permitting the carrying out of social events and operating a bar within the Watamu residential area are a violation of the Petitioners' right to ownership of property, land zoning laws, and right to a clean and healthy environment.
- e. A mandatory injunction be issued against the 7th Respondent compelling them to issue and enforce closure notices against the 1st and 2nd Respondents' premises for being in contravention of the Environment Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009.
- f. A mandatory injunction be issued against the 3rd and 4th Respondents, compelling them to revoke all liquor licenses issued to the 2nd Respondent and any other party selling alcohol in the Watamu residential area.
- g. A permanent injunction be issued restraining the 1st and 2nd Respondents, their servants, agents, or otherwise, from permitting any social events within the Watamu residential area, which events lead to excessive traffic congestion on the road leading to the residential homes.
- h. An order of mandamus be issued compelling the 2nd Respondent to produce under oath copy of its certificate of title for its property showing the user of the properties, details of any change of user that may have been obtained converting the land from residential to recreational, commercial or industrial, copies of all approvals obtained from the National Environment Management Authority and the County Government of Kilifi allowing various business on the suit properties and evidence of public participation if any and permits for conducting the various activities on its property.
- i. An order of mandamus be issued to compel the 3rd to 7th Respondents to take the following measures:
 - a. The 7th Respondent is directed to order its technical committee to prepare a report to be filed in court on the properties of the 1st and 2nd Respondents on:
 - i. The status of the user of the property and if any change of user was obtained, the zonal requirements of the area.
 - ii. Investigate if the directors of the 1st and 2nd Respondents are criminally liable for breach of any land planning laws.
 - iii. Approvals obtained by the resort to carry out commercial/recreational activities on a protected marine national park.
 - iv. All licences granted to the resort to carry out commercial/recreational activities in a zoned residential area.



- v. Consents/approvals obtained in the construction of a lighthouse located in the Watamu National Reserve.
 - b. The 3rd Respondent does order the 1st and 2nd Respondents under section 57 (3) of the *Physical and Land Use Planning Act* to restore the suit properties to their original condition, and that such restoration be ordered to take place within ninety days at the 1st and 2nd Respondents' costs.
 - c. The Respondent's environmental inspector be ordered to investigate the 1st and 2nd Respondents, examine records and submit a report to court detailing all the activities taking place on the suit property and the impact on the environment as regards noise and light pollution and environmental ruin on the marine ecosystem, species, or habitat within Watamu Marine Reserve and its surrounding.
 - j. General damages to be paid by the Respondents.
 - k. Exemplary damages to be paid by the Respondents.
 - l. Costs to be paid by the Respondents on a full indemnity basis.
2. The petition is filed by six individuals, primarily led by Mr. Jared B. Kangwana, who is named as the 1st Petitioner. He is representing himself and five other residents of Watamu Area in Kilifi County: Mrs. Tabitha Kangwana (2nd Petitioner), Mr. Richard Bradley (3rd Petitioner), Mrs. Deborah Bradley (4th Petitioner), Dr. Mauro Saio (5th Petitioner), and Mrs. Mauro Saio (6th Petitioner). Their legal representation is provided through Messrs. Wamae & Allen LLP.
 3. The petition lists seven respondents, which include both private entities and government agencies. The 1st Respondent is described as a limited liability company that operates an entertainment venue in Watamu, Kilifi County, owned by foreigners. The 2nd Respondent is also a limited liability company owned by a foreigner, running a bar and restaurant in Watamu. This entity is specifically identified in the petition as the main source of noise nuisance. The 3rd Respondent is the County Government of Kilifi, responsible for local governance within the county. The 4th Respondent is an office under the Kilifi County Government that manages liquor licensing. The 5th Respondent, the Kenya Wildlife Service (KWS), is a State Corporation established under the *Wildlife Conservation and Management Act*, Cap 376, with the duty of conserving and managing wildlife and enforcing related laws in Kenya. The 6th Respondent is a state authority created by the *Tourism Act*, 2011. Its goals include regulating the tourism sector, creating guidelines for sustainable tourism, and licensing and grading tourism activities nationwide. The 7th Respondent is established under the Environmental Management and Coordination Act (EMCA) No. 8 of 1999, to promote sustainable environmental management by overseeing ecological issues and serving as the main government body for implementing environmental policy. The Interested Party is the Chairman of the Watamu Association, a residents' group actively involved in protecting and promoting the interests of its members and the Watamu Community, as well as safeguarding the area's biodiversity and ecology for sustainable use.
 4. The petition is filed by residents of Watamu, Kilifi County, who allege that the 1st and 2nd Respondents are operating commercial entertainment activities within the Watamu Marine National Reserve, a gazetted marine protected area designated as a UNESCO biosphere reserve. The Petitioners argue that these activities, including large-scale events and daily social gatherings, have caused ongoing and excessive noise, light, and waste pollution, negatively impacting the peace, health, and environment of the surrounding low-density residential and agricultural zone.



5. The Petitioners state that the 1st and 2nd Respondents' premises are situated on land held under freehold title and designated for agricultural use, with no evidence of a lawful change of user having been obtained. They provide a detailed timeline of complaints from December 2020 to June 2024, including written communications to the Respondents, records from a residents' WhatsApp group, and formal grievances filed with NEMA, the County Government, and other statutory regulators.
6. Notably, the Director of the 1st and 2nd Respondent establishments, Mr. Hans Jurgen Langer, is documented on several occasions, such as December 30, 2020, January 2, 2022, and June 9, 2024, acknowledging excessive noise, including an explicit admission that sound levels at the venue routinely exceed 65 decibels, despite court decisions recommending a limit of 35 to 45 decibels. The Petitioners also allege that the Respondents failed to carry out any public participation or Environmental Impact Assessment (EIA) before starting or expanding operations, thereby violating Section 58 of EMCA and Article 10 of *the Constitution*.
7. They also assert that solid waste from the 2nd Respondent's premises is regularly discharged into the Mida Creek ecosystem, threatening the nearby mangrove forest protected under Proclamation No. 44 of 1932 and Legal Notice No. 174 of 1964.
8. The Petitioners cite multiple legal provisions including Articles 10, 28, 42, 47, 69, and 70 of *the Constitution*, the EMCA (including the 2009 Noise and Vibration Regulations), the Kilifi County Liquor Control Act, the *Physical and Land Use Planning Act*, and the Watamu Marine Protected Area Management Plan (2016–2026) to argue that the 1st and 2nd Respondents' operations are illegal, ecologically damaging, and violate their fundamental rights. They also argue that the regulatory authorities, the 3rd to 7th Respondents, failed in their statutory and constitutional duties by issuing licenses and not enforcing compliance, thus neglecting their responsibilities.
9. The Petition is supported by affidavits sworn by Jared Kangwana on July 1, 2024, and September 27, 2024.
10. In response to the petition, the 1st and 2nd Respondents entered an appearance through the firm of Makambo Makabila and Co. Advocates. They filed a Replying Affidavit sworn on July 26, 2024, by Jan Langer, who is described as the director of the 1st and 2nd Respondents. Mr. Langer states that Temple Point Resort is situated on a 13-acre parcel in Watamu and has operated as a licensed hospitality establishment since 1988, previously known as Salama Beach Hotel. Since 2016, the resort has been managed by the 1st Respondent and is appropriately registered and licensed by the Tourism Regulatory Authority, Kilifi County Government, and other relevant statutory bodies. The resort holds valid annual liquor and trade licenses and conducts business in accordance with environmental, health, and safety regulations.
11. The 2nd Respondent states that Lichthaus Bar is not a standalone business but a social and recreational space within the resort's premises. The premises operate only during permitted hours, with music typically restricted between 4:00 p.m. and 10:00 p.m., save for a few exceptional events authorized by the County Government. He contends that the Petitioners have mischaracterized the nature of the events held at the resort, which include occasional weddings, conferences, and the annual "Kaleidoscope Festival", an event he says is well-organized and lawfully permitted.
12. The 2nd Respondent asserts that environmental due diligence has been properly carried out in accordance with the Environmental Management and Coordination Act (EMCA). He attaches Environmental Impact Assessment reports and audit summaries, demonstrating compliance with solid waste management protocols, the use of biodigesters and solar energy, and soundproofing measures. The Respondents deny discharging any untreated waste into Mida Creek and describe the Petitioners'



- photographic evidence as unauthenticated and misleading. They also deny causing significant light or noise pollution, citing acoustic assessments by NEMA, which determined that operations remain within permissible decibel limits.
13. Regarding zoning, the 2nd Respondent challenges the Petitioners' claim that the area is solely residential, arguing instead that Watamu is a known tourism hub with mixed land use. He also notes that some Petitioners run guesthouses and commercial dhow tours, and questions whether they have followed the relevant regulatory frameworks themselves.
 14. Mr. Langer states that the construction of the Lichthaus Bar along the shoreline was carried out with full knowledge and approval of the Kenya Wildlife Service and NEMA. The structure is constructed using biodegradable materials, and the installed lighting is low-wattage and complies with marine ecosystem standards. He further indicates that the Petitioners' complaints were addressed through engagement, and that attempts were made to informally mediate noise concerns.
 15. Ultimately, the 2nd Respondent describes the petition as malicious, exaggerated, and designed to frustrate a lawfully operated hospitality business that existed before the Petitioners' presence in the area. He requests the Court to dismiss the petition with costs.
 16. In his supplementary affidavit sworn on May 6, 2025, Mr. Langer reaffirms his denial of any wrongdoing. He states that the Watamu area, where the 1st Respondent operates Temple Point Resort, is a mixed-use tourism zone, not solely residential as claimed. He explains that although the property was initially registered for residential use in 1957, the area's character has since changed, and its current use is effectively commercial, even though formal approval of this change by the Chief Land Registrar is still pending.
 17. He asserts compliance with all licensing requirements, including liquor licenses, and claims that any noise complaints were addressed in good faith. He questions the accuracy and verifiability of the Petitioners' noise data, attributing perceived excesses to coastal climatic conditions. Regarding the eco-bar (Lichthaus), he states it was lawfully approved by the 5th Respondent, whose subsequent denial he dismisses as misleading. Mr. Langer maintains that no lease or procurement process was necessary, as the bar is on private land owned by the 1st Respondent.
 18. He adds that the affidavit filed on behalf of the 3rd and 4th Respondents addresses matters beyond the deponent's knowledge or jurisdiction and urged the court to disregard paragraphs 6 and 9 thereon. Regarding the liquor licenses issued to the 1st Respondent, he exhibits the licenses issued by the 3rd Respondent as "JL-2." He states that the granted license is conclusive proof that the 1st Respondent is authorized to sell alcohol on the premises. The 3rd Respondent cannot, in these circumstances, deny the licenses because it had not conducted an inspection or approved the 1st Respondent's premises.
 19. The 3rd and 4th Respondents, the County Government of Kilifi through its Directorate of Liquor and Betting Control, filed a replying affidavit sworn by Mr. Jacob Sirya, the Chairperson of the Kilifi North Liquor Licensing Committee, on March 3, 2025. In the affidavit, Mr. Sirya denies the Petitioners' claims that they have failed to enforce the law against the 1st and 2nd Respondents. He states that enforcement is an ongoing process, and steps have already been taken, including an audit conducted on July 3, 2024, to evaluate compliance with licensing and environmental standards. He further affirms that regulatory oversight has not been abandoned, and that relevant authorities are actively working to ensure compliance with the law.
 20. Mr. Sirya further asserts that the 2nd Respondent does not hold a valid liquor license according to their records. Although the 2nd Respondent made payment for the renewal, it did not submit the necessary application form, which prevented the committee from conducting an inspection and approving the



renewal. He clarifies that payment alone does not constitute renewal unless a proper inspection and committee approval follow it. Copies of the inspection report and pending application forms were attached to the affidavit as evidence of this procedural non-compliance.

21. The 3rd and 4th Respondents further deny any responsibility for playing music above the permitted noise levels at the 1st and 2nd Respondents' premises, stating that no such license was issued. They emphasize that the mandate of the 3rd and 4th Respondents does not include authorizing activities that violate the Watamu Marine Protected Area Management Plan (2016–2026), and that the 1st and 2nd Respondents are not exempt from complying with it.
22. The deponent states that they submitted a noise monitoring report from the Department of Environment, Forestry, Climate Change, and Solid Waste Management, which shows partial failure by Lichthaus Bar and Restaurant to adhere to the allowed decibel limits.
23. Notably, the 3rd Respondent filed a supplementary replying affidavit sworn on May 7, 2025, by Raymond Nzai, who is described as the Head of Development Control of the 3rd Respondent. He acknowledges receiving an application for a change of user submitted by the 1st and 2nd Respondents on February 19, 2025, through their physical planner, Abubakar A. Maddy. This fact aligns with the annexures attached to the 1st and 2nd Respondents' supplementary affidavit. However, the 3rd Respondent clarifies that, contrary to any assumption of ongoing processing or tacit approval, the application has since been revoked. A revocation notice was formally issued on May 7, 2025, and has been introduced as evidence, marked as exhibit RY1.
24. The 5th Respondent, KWS, through a replying affidavit sworn on March 14, 2025, by Ms. Gladys Kosgei, its Deputy Director of Business Development and Marketing, confirms its statutory mandate to manage and protect marine protected areas in Kenya, including Watamu Marine Park and Watamu Marine Reserve. She clarifies that any commercial operation within a marine protected area, such as those allegedly conducted by the 1st and 2nd Respondents, must be based on a formal lease agreement with KWS, and no such lease exists between it and the Respondents concerning any property or activity within the Watamu National Reserve. She disclaims any role in licensing or authorizing the business operations of the 1st and 2nd Respondents, emphasizing that KWS does not issue operational permits for commercial activities like bars or restaurants.
25. The petition was canvassed by way of written submissions.

The Petitioners' submissions

26. In their submissions dated March 14, 2025, the Petitioners argue that the right to a clean and healthy environment is a fundamental right under Chapter 4 of *the Constitution*. They state that this right is essential for human existence and is an entitlement for both current and future generations. They cite Articles 42 and 70 of *the Constitution*, highlighting the State's obligations under Article 69 to ensure sustainable use of resources, protect biodiversity, promote public participation, establish environmental impact assessments, and eliminate harmful activities. They reference various judicial precedents, including *Adrian Kamotho Njenga v Council of Governors and 3 others*, *Cortec Mining Kenya Ltd v Cabinet Secretary, Ministry of Mining & 9 Others*, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (Communication No. 155/96) (Communication 155 of 1996) [2001] ACHPR 35 (27 October 2001), to emphasize the importance and enforceability of environmental rights. The Supreme Court's decision in *Export Processing Zone Authority and 10 others* (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) v National Environment



- Management Authority and 3 others (Petition E021 of 2023) [2024] KESC 75 (KLR) is also cited as reaffirming the sacred nature of the right to a clean and healthy environment.
27. The Petitioners argue that the actions of the 1st and 2nd Respondents have, over the years, severely violated their right to a clean and healthy environment protected under Articles 42 and 70 of *the Constitution* of Kenya. They contend that *the Constitution* guarantees everyone the right to a clean and healthy environment, including the protection of the environment for present and future generations. The Petitioners refer to Article 69, which requires the State to ensure sustainable environmental practices, encourage public participation, protect biodiversity, and eliminate activities that harm the environment. These obligations are reinforced by the enforcement provisions under Article 70, which authorize courts to issue orders to prevent or stop activities harmful to the environment or to compel public officials to act in the interest of environmental protection.
 28. They provide extensive correspondence and WhatsApp messages documenting numerous complaints to the Respondents' management, including admissions of excessive noise by the manager, Jan Langer. The Petitioners argue that, despite many written complaints and repeated requests for action, the noise levels have remained unaddressed, severely affecting the Petitioners' and residents' quality of life. They assert that the noise pollution, mainly from the 2nd Respondent, has persisted beyond the legally acceptable levels outlined in the First Schedule of the Environment Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, causing serious psychological distress, sleep deprivation, and health problems—all of which violate the Petitioners' constitutional right to a clean and healthy environment.
 29. The Petitioners contend that the 1st and 2nd Respondents operate entertainment joints selling alcohol within a low-density residential area zoned as freehold agricultural land, without obtaining planning permission or a change of user. They cite *Mumara Estate Residents Association vs Nairobi County & 2 Others* [2015] eKLR, and *Kilimani Project Foundation v B Concept Limited t/a B Club Nairobi & 7 others* [2019] eKLR, which held that liquor should not be sold near residential areas, as such places require peace and a healthy environment for rest.
 30. The Petitioners further argue that the Respondents have failed to provide evidence of any change of user or planning permission despite court orders, and that the 3rd to 7th Respondents have failed to assist in this assessment as they are required to do so. To support this argument, they relied on the case of *Amani Residents Welfare Association/Mirema (Suing on behalf of the Residents of Mirema Estate, Nairobi) v Senteu t/a Cocorico Wines & 5 others* [2024] KEELC 5172 (KLR), where the court held that public bodies are mandated by the Supreme law of the land to intervene and assist the citizens once they are called out to.
 31. The Petitioners submit that the 2nd Respondent's premises are located within the Watamu Marine Protected Area (WMPA), a UNESCO Biosphere Reserve, and within mangrove forest frontiers as defined by Proclamation No. 44 of 1932 and Legal Notice No. 174 of 1964. They cite the Supreme Court decision in *Pati Limited v Funzi Island Development Limited and 4 others* (Petition 37 of 2019) [2021] KESC 29 (KLR), which held that such land cannot be allocated to the public as it forms part of a protected mangrove ecosystem.
 32. It is the Petitioners submissions that the 1st and 2nd Respondents have failed to mitigate the noises and have given little or no consideration mechanisms that will limit the amount of noise produced within the premises, despite the clear dictates of Regulation 3(2) of the EMCA (Noise and Excessive Vibration Pollution (Control)) Regulations, 2009, as read together with Articles 42 and 69 of *the Constitution* which enjoins every person to bear in mind, whenever they produce noise, to prevent it from being loud, unreasonable, unnecessary or unusual.



33. To the Petitioners, the 1st and 2nd Respondents are operating without a license from the 6th Respondent and do not meet the criteria for license issuance as outlined in Section 98 (5) of the [Tourism Act](#), Cap 381.
34. The Petitioners argue that the provisions of Articles 10(2) and 69 of [the Constitution](#) concerning national values, public participation, and principles of good governance, as well as Section 58 of the Environmental Management and Coordination Act 1999 and Regulation 3 of the Environmental (Impact Assessment and Audit) Regulations, 2003, are not merely for cosmetic purposes. Therefore, their participation and input should be considered before issuing any licenses to the 1st and 2nd Respondents.
35. They cite *National Assembly and another v Okoiti & 55 others* [2024] KECA 876 (KLR), which emphasized the importance of public participation and stated it should not be seen as an insignificant process or mere formality. They also rely on *British American Tobacco Kenya, PLC formerly British American Tobacco Kenya Limited v Cabinet Secretary for the Ministry of Health and 2 others; Kenya Tobacco Control Alliance and another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party) (Petition 5 of 2017)* [2019] KESC 15 (KLR); *Legal Advice Centre and 2 others v County Government of Mombasa & 4 others*; and *Nairobi Civil Appeal 200 of 2014 Kiambu County Government & 3 others v Robert N. Gakuru and Others* [2017] eKLR.
36. To further support their arguments that they are entitled to a clean, safe, and healthy environment, the Petitioners cite *Amani Residents Welfare Association/Mirema (Suing on behalf of the Residents of Mirema Estate, Nairobi) v Senteu t/a Cocorico Wines and 5 others* [2024] KEELC 5172 (KLR), *Professor Albert Mumma v County Government of Nairobi* [2021] eKLR; *Sikalieh (Suing as the Chairman of Karen Langata District Association) v Karuna Holdings Limited & 6 others (Environment and Land Petition E060 of 2022)* [2023] KEELC 22501 (KLR), *Amina Said Abdalla and 2 others v County Government of Kilifi and 2 others* [2017] eKLR; *Komo Chege & 6 others v Joseph Wanjiku Mwangi & 16 others* [2016] eKLR; *DI Koisagat Tea Estate Ltd v Eritrea Orthodox Tewhdo Church Ltd* [2015] eKLR.
37. Regarding whether noise is unreasonable or impermissible, the Petitioners cite the Court of Appeal in *Elisabeth Kurer Heier and another v County Government of Kilifi and 4 others* [2020] KECA 645 (KLR) where it was stated that while determining this query the court ought to take cognizance of Regulation 3 (2) of the EMCA Regulations which set out factors for considerations as; time of the day, proximity to the residential premises, recurrence of the noise; intermittent, constant or persistence; the level of intensity and whether any type of electronic device has enhanced the noise.
38. Regarding whether the 3rd-7th Respondents have neglected their constitutional and statutory duties to prevent violations of the Petitioners' right to a clean and healthy environment as outlined in Articles 42 and 70 of [the Constitution](#), the Petitioners argue that [the Constitution](#) of Kenya, under Article 69, imposes significant obligations on the state through the 3rd-7th Respondents. These obligations include protecting the Petitioners and Watamu residents from environmental harm and pollution caused by the 1st and 2nd Respondents. The Petitioners assert that these Respondents have failed to fulfill these duties despite numerous demands.
39. On whether the Respondents are in contempt of the Court Orders emanating from the Ruling dated 18th December 2024, the Petitioners submit that the 2nd Respondent has failed, ignored and refused to comply with the court orders issued on 31st July 2024 directing them to produce copies of the Certificate of Title indicating the user of their properties, details of any change of user obtained, copies of all approvals obtained from the National Environment Management Authority and the County Government of Kilifi allowing the various business on the suit properties and evidence of public



participation if any and permits for conducting the different activities on its property. That the 1st and 2nd Respondents continue with their conduct complained of in blatant disregard of the interim orders. They urge the court to hold the director in contempt.

40. On whether the petitioners are entitled to general and exemplary damages, they submitted that the court has jurisdiction under Article 70 (2)(c) of *the Constitution* and Section 3 of the *Environmental Management and Co-Ordination Act* to provide compensation to the Petitioner and the area residents for violations by the 1st and 2nd Respondents for breach of the right to a clean and healthy environment. The Petitioners argue that they are entitled to compensation due to the blatant contravention of their fundamental rights and freedoms as encapsulated in *the Constitution*.
41. To support this position, they cite Section 2 of the *Environmental Management and Co-ordination Act*, Section 3(5)(e) of the EMCA, the Rio Declaration on Environment and Development (Agenda 21) (1992)—which forms part of our laws by virtue of Article 2(5) of *the Constitution*—at Principle 16—and the case of *N Kiluwa Limited and Another v Commissioner of Lands and 3 others* [2015] eKLR, *Michael Kibui and 2 others (suing on their own behalf as well as on behalf of the inhabitants of Mwamba Village in Uasin Gishu County) v Impresa Construzioni Giuseppe Maltauro SPA and 2 others* [2019] eKLR, *Gitobu Imanyara and 2 others v Attorney General, Mwakia and 4 others (suing for themselves and on behalf of the entire Miasenyi-Majengo Mapya Village, comprising about two hundred seventy affected people) v Kenya Pipeline Company; National Environment Management Authority (Interested Party)* (Land Case E002 of 2023) [2025] KEELC 850 (KLR).
42. Regarding who is entitled to costs, the Petitioners argue that this Court should award costs in accordance with Section 27 of the *Civil Procedure Act* Cap 21.

The 1st and 2nd Respondents' submissions

43. In their comprehensive submissions dated May 6, 2025, the 1st and Respondents refute the allegations of operating without licenses. They provide trade licenses, liquor licenses, and hotel operation licenses issued by the legally appointed authorities, asserting their genuineness and validity. They clarify that Lichthaus Bar is part of the 1st Respondent's operations and does not operate as an independent entity, despite being registered as a limited liability company. It was registered solely for strategic reasons to prevent use by other entities, but it does not conduct any business or trade.
44. They argue that the 3rd and 4th Respondents' attempt to renounce the liquor licenses is merely an afterthought, as they do not deny issuing the licenses or their validity. They also point out that Section 16 of the Kilifi County Liquor Control Act, 2015, which addresses license renewals, does not mandate inspection for renewal. They contend that licenses issued by public bodies, such as the 3rd Respondent, are conclusive evidence of compliance with the law, unless there is proof of fraud or illegality on the part of the licensee. Additionally, the 3rd Respondent cannot simply deny the licenses it has issued whenever it finds it convenient.
45. The 1st and 2nd Respondents state that although the 1957 title deed listed the area as residential, it has developed over the years into a well-known tourist destination with many hotels. They argue that zoning is the responsibility of the County Government, and the approval for numerous hotels to operate in that area indicates permission for commercial activity. They contend that Watamu has become a mixed-use area with both commercial and residential functions. Furthermore, they state that the 1st Respondent applied for and was granted a change of use to commercial, which they see as evidence that the area was designated for both commercial and residential purposes by the 3rd Respondent.



46. The 1st and 2nd Respondents argue that the 1st Respondent is the registered owner of Plot L.R. No. 8990, located within the Watamu Marine National Park and Reserve, and therefore falls under the regulatory jurisdiction of the 5th Respondent. They claim that they obtained all necessary approvals to build and operate the Lichthaus Bar, specifically referencing a letter dated April 20, 2018, requesting approval and a subsequent approval letter dated June 2, 2021, from the 5th Respondent. The authenticity of these documents was not contested by either the Petitioners or the 5th Respondent. They dismiss the 5th Respondent's late attempt to disown the approval through a Replying Affidavit, which alleged non-compliance with the *Public Procurement and Asset Disposal Act*, as legally flawed and unsubstantiated. They argue that the Act does not apply to development on private land and therefore urge the Court to ignore the 5th Respondent's affidavit as an attempt to evade accountability.
47. The 1st and 2nd Respondents argue that the Petitioners have failed to demonstrate any environmental or constitutional violations as claimed. They assert that there is no evidence of waste being discharged into Mida Creek, referencing unchallenged Environmental Audit Reports from 2023 and 2024 that confirm compliance with waste management regulations and show no significant impact.
48. On the issue of noise pollution, the 1st and 2nd Respondents dispute the Petitioners' decibel readings as unverified, lacking proper calibration, source, or context. Instead, they rely on an Acoustic Assessment Report by the Malindi Sub-County Office, dated July 24, 2024, which shows compliance, as well as a scientific article, "Wind and Temperature Effects on Sound Propagation," to explain possible sound amplification caused by coastal weather conditions.
49. The 1st and 2nd Respondents also argue that the Petitioners' electronic evidence does not meet the requirements of Section 106B of the *Evidence Act*. They cite Hassan Ahmed Ibrahim v Kenya National Bureau of Statistics and 2 Others [2019] eKLR, which emphasizes the need for strict adherence to evidentiary standards even in constitutional cases. Additionally, they reference Anne Wambui Ndiritu v Joseph Kiprono Ropkoi and Another [2004] eKLR on the burden of proof, stating that the Petitioners failed to meet it.
50. Finally, the 1st and 2nd Respondents argue that the allegations do not amount to constitutional violations, citing Mwendia v Runda Water Limited and Another [2014] eKLR, which found that not every breach of statutory or regulatory duties constitutes a constitutional infringement. They contend that competent public authorities, such as NEMA (the 7th Respondent), are better suited to handle such disputes, and therefore, the Petition should be dismissed with costs.

The 3rd and 4th Respondents' submissions

51. The 3rd and 4th Respondents filed submissions dated 2nd April 2025.
52. 3rd and 4th Respondents submit that having conducted an audit on the 2nd Respondent dated 3rd July 2024, as is required under Article 69 (a) of *the Constitution* of Kenya and Section 3 (3) of the Environmental Management and Coordination Act, No. 8 of 1999, and having issued warnings to the 1st and 2nd Respondents over noise pollution in their premises, the burden shifted to the 7th Respondent to prove to the court that it issued a stop order against the 2nd Respondent to prevent them from the continued violation of the Petitioners' rights. To support their arguments, they cite Elizabeth Kurer and Detlef Heir (suing on their behalf and on behalf of the aggrieved residents of Watamu within Kilifi County) v County Government of Kilifi and 4 Others [2018] eKLR; Kindiki v Christian Foundation Fellowship Church Mpakone through its Registered Trustees & 5 Others (Environment & Land Petition E012 of 2023) [2024] KEELC 6063 (KLR).



53. They argue that section 3 of the Kilifi County Trade License Act, 2016, requires every business owner in the County to hold a valid trade license, and the process for obtaining it is outlined in the Act. They also state that the requirements are specified under section 14 of the Kilifi County Liquor Control Act, 2015. They contend that for 2024, the 2nd Respondent has not yet been issued a license. Since licenses are renewed annually, the Court cannot issue orders to revoke all previous licenses as they no longer exist.
54. The 3rd and 4th Respondents argue that while the 1st and 2nd Respondents are operating within a residential area without an EIA license as required under Section 58(1) of the EMCA, Action 2.2 of the Watamu Marine Protected Area Plan involves consulting with hoteliers in the conservation of the marine ecosystem, which could be interpreted to include bars. Therefore, depending on the specific conditions of the lease held by the 1st and 2nd Respondents, the change of user may not necessarily be relevant. To support this position, they cite *Maanzoni Owners Association (suing through its officials Isaac Kimilu - Chairman, Robert Mugo Wa Karanja - Treasurer, and Susan Wanjiku Ngigi - Secretary) v Pamela Tutui and 2 Others* [2021] eKLR.
55. They also argue that the Petitioners have not met the burden of proof to demonstrate that the 3rd and 4th Respondents have not fulfilled their mandate under section 72 of the Physical Land Use and Planning Act.

The 6th Respondent's submissions

56. On its part, the 6th Respondent relies on submissions dated May 6, 2025,
57. According to the 6th Respondent, the 1st and 2nd Respondents have been obtaining the tourism license since 2015 after being found to meet the standards under the *Tourism Act*, 2011. It argues that when a state agency derives its authority from law, *the Constitution*, or a Statute, the court cannot interfere with the agency's decision but can only review the process leading to that decision to determine if any illegalities affected it. For the 6th Respondent, when investigating whether the agency performed its functions lawfully, the court can only examine whether the licensing process was lawfully conducted. It cites the case of *Mini Cabs and Tours Company Limited v Attorney General and 2 Others* (Petition 450 of 2019) [2022] KEHC 11207.
58. Citing Rule 10 (2) of the Mutunga Rules, as well as the case of *Anarita Karimi Njeru v Republic* [1979] eKLR and *Mumo Matemu v Trusted Society of Human Rights Alliance and 5 Others* [2013] eKLR, the 6th Respondent argues that for a petition to meet the constitutional threshold, it must specify a reasonable level of precision regarding the three-tier test—specifically, what is being challenged, the provision alleged to be violated, and how it is claimed to be violated. To the 6th Respondent, the Petitioners have failed to specify how any of the alleged articles were violated. Indeed, they state that there is no cause of action against it, as no order is sought against it or anything that warrants a response from the 6th Respondent.
59. The 6th Respondent further argues that the court is prevented from resolving the issue due to the doctrine of constitutional avoidance, as outlined in section 90 (e) of the *Tourism Act*, 2011, which allows any party aggrieved by a decision or act of a person under the Act to seek redress through the Tribunal established under it. Reliance is placed on the case of *Communications Commission of Kenya and 5 Others v Royal Media Services Limited & 5 others* (Petition 14, 14A, 14B & 14C of 2014 (consolidated)) [2014] KESC 53 (KLR).
60. In conclusion, the 6th Respondent requests that the Court dismiss the Petition against it with costs.



Analysis and determination

61. Arising from the materials, averments, and submissions by the parties, the issues I frame for the court's determination are as follows:
- i. Whether the petition meets the constitutional threshold.
 - ii. Whether the Petitioners should have exhausted any existing internal dispute mechanism before filing the petition.
 - iii. Whether the Petitioners have pleaded and proved a breach of their right to a clean and healthy environment by each of the respondents.
 - iv. Whether the Petitioners are entitled to any constitutional reliefs.
 - v. What is the order as to costs?
62. A party seeking relief due to an alleged breach or threatened violation of constitutional rights and freedoms must not only prove the alleged violations but also comply with the procedural and substantive requirements outlined in *the Constitution* and applicable rules of procedure. Articles 22, 23, 159, and 258 of *the Constitution* authorize individuals to approach the Court to enforce constitutional rights. However, the exercise of that right is governed by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules).
63. The Court is guided by established jurisprudence, notably the precedent set in *Anarita Karimi Njeru v Republic (Supra)*, where the High Court underscored that an individual seeking redress for a violation of constitutional rights must clearly articulate the right allegedly infringed, the manner of infringement, and the nature of injury suffered with reasonable specificity. Furthermore, Rule 10 of the Mutunga Rules delineates the required form that a constitutional petition should take. Specifically, Rule 10(2) of the same Rules explicitly states:
- (2) The petition shall disclose the following—
- (a) the petitioner's name and address;
 - (b) the facts relied upon;
 - (c) the constitutional provision violated;
 - (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
 - (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
 - (f) the petition shall be signed by the petitioner or the advocate of the petitioner; and
 - (g) the relief sought by the petitioner.
64. I have reviewed the Petitioners' petition dated July 1, 2024. The petition is founded on Articles 10, 19, 28, 29, 35, 40, 42, 69, 70, and 232; however, it predominantly emphasizes the rights guaranteed under Articles 42, 69, and 70 of *the Constitution* of Kenya. For clarity, I will restate the relevant provisions below.



65. With regard to the environment, Article 42 provides:

“Every person has the right to a clean and healthy environment, which includes the right—

- (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and
- (b) to have obligations relating to the environment fulfilled under Article 70.

66. On obligations regarding the Environment, Article 69 states:

“(1) The State shall—

- (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- (b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- (d) encourage public participation in the management, protection and conservation of the environment;
- (e) protect genetic resources and biological diversity;
- (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- (g) eliminate processes and activities that are likely to endanger the environment; and
- (h) utilise the environment and natural resources for the benefit of the people of Kenya.

- (2) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.”

67. On the Enforcement of Environmental Rights, Article 70 states:

- “(1) If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.
- (2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate—



- (a) to prevent, stop or discontinue any act or omission that is harmful to the environment;
 - (b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or
 - (c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.
- (3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.

68. It is also well-established that the requirements outlined in the Anarita Karimi Case (supra) are not merely procedural formalities. They serve to ensure that constitutional litigation is conducted as a serious and methodical process, rather than as a means to bypass statutory dispute resolution mechanisms or to disguise generalized grievances as constitutional violations. This also aligns with the doctrine of constitutional avoidance.
69. In the present petition, the Court must assess whether the petition has been articulated with the necessary specificity and clarity; whether the Petitioners have sufficiently demonstrated a violation of constitutional rights by the Respondents; and whether the issues raised are properly justiciable before this Court at first instance or if statutory dispute resolution procedures apply.
70. As previously outlined, the petition delineates various provisions of *the Constitution* purportedly violated, including Articles 42, 69, and 70. The Petitioners assert that the 1st and 2nd Respondents are conducting commercial entertainment activities within the Watamu Marine National Reserve, a designated marine protected area and UNESCO Biosphere Reserve. They claim that these activities produce excessive noise, light, and waste pollution, thereby compromising the tranquility, health, and environmental integrity of the adjacent low-density residential and agricultural zones. Additionally, the Petitioners allege that the premises in question are situated on land allocated for agricultural use and that there is no evidence of a lawful modification of the land use permits to permit such commercial entertainment activities. Regarding the 3rd to 7th Respondents, the Petitioners accuse them of regulatory neglect and failure to fulfill their statutory duties, thereby facilitating the continued violation by the 1st and 2nd Respondents.
71. It is clear to me that the concerns outlined in the petition regarding zoning irregularities, licensing approvals, noise, waste pollution, and regulatory inaction can be addressed within a legal and administrative framework. This framework outlines specific mechanisms for investigation, oversight, and redress before resorting to court intervention.
72. The *Environmental Management and Co-ordination Act* (EMCA), the *Physical and Land Use Planning Act* (PLUPA), and the licensing frameworks under County laws and Tourism Regulations establish structured procedures and competent bodies to handle such complaints. This emphasizes the relevance of the doctrine of exhaustion.
73. The doctrine of exhaustion of administrative remedies, combined with the doctrine of constitutional avoidance, requires parties to initially pursue all available remedies within administrative agencies before turning to the courts. These promote efficiency, value administrative expertise, and maintain the separation of powers. For example, in *William Odhiambo Ramogi and 3 others v Attorney General*



and 4 others; Muslims for Human Rights and 2 others (Interested Parties) [2020] eKLR, the Court held that:

- “ 52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR, where the Court opined thus:
42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in Speaker of National Assembly v Karume [1992] KLR 21 in the following oft-repeated words:
- Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.
43. While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine. This is Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others [2015] eKLR, where the Court of Appeal stated that:
- It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”
55. Given the foregoing, the key question is whether the Petitioners have a remedial course of action available within the scope of the Statutes they should have pursued before filing the petition. The current petition involves several different legal regimes, each managed by its own regulatory authorities and equipped with its own administrative dispute resolution procedures.
56. For instance, the Petitioners’ complaints about excessive noise and light pollution, improper solid waste disposal, and the alleged failure to carry out Environmental Impact Assessments (EIAs) fall directly



within the regulatory authority of the National Environment Management Authority (NEMA), the 7th Respondent, as outlined in Section 7 of EMCA, No. 8 of 1999.

57. Under Sections 58 and 69 of EMCA, NEMA is responsible for ensuring that Environmental Impact Assessments (EIAs) are conducted before starting projects that could have a significant environmental impact, and for enforcing noise and waste management regulations. Suppose anyone is dissatisfied with NEMA's issuance, denial, or conditions of an environmental license or permit, or with its inaction. In that case, that person must appeal to the National Environment Tribunal (NET) under Section 129(1) of EMCA. This tribunal provides the appropriate forum for addressing concerns related to environmental licensing and enforcement.
58. Furthermore, the Petitioners claim that the 1st and 2nd Respondents are operating without a valid license issued by the 6th Respondent and have not met the licensing requirements outlined in the *Tourism Act*, Cap 381 of the Laws of Kenya. Notably, the *Tourism Act*, 2011, provides mechanisms for handling complaints related to the issuance and denial of licenses under the Act.
59. In its submissions, the 6th Respondent correctly invoked the doctrine of constitutional avoidance, urging this Court to refrain from exercising jurisdiction where a specialized statutory mechanism exists. I agree with the 6th Respondent's position. The existence of an express statutory dispute resolution mechanism ousts the Court's jurisdiction at the first instance, in keeping with the well-established principle that constitutional questions should not be determined where an adequate alternative remedy is available and has not been exhausted.
60. The Petitioners request a mandatory injunction directing the 3rd and 4th Respondents to revoke all liquor licenses issued to the 2nd Respondent. The 4th Respondent clarified that the 2nd Respondent does not have a valid liquor license for 2024 because the application form was not submitted for review and approval. However, the Kilifi County Liquor Control Act, 2015, under Section 11, establishes a Sub-County Committee responsible for managing liquor license applications and objections. It also provides for a Review Committee to hear appeals from decisions made by the Sub-County Committee, thereby creating a transparent dispute resolution process.
61. Furthermore, Section 11 of the Kilifi County Trade Licence Act, 2016, affirms the availability of administrative remedies in licensing disputes. In accordance with these statutory frameworks, any grievances concerning the issuance or revocation of liquor licenses should initially be addressed through the designated administrative channels, in accordance with the doctrine of exhaustion. The Petitioners have not demonstrated that they have pursued or exhausted such avenues.
62. The Petitioners further argue that the 1st and 2nd Respondents are conducting activities within a residential area designated as freehold agricultural land without the necessary planning permission or a change of land user authorization. This conduct contravenes relevant land use regulations. Therefore, they request an order directing the third 3rd Respondent, Kilifi County Government, to restore the properties to their original state in accordance with Section 57(3) of the *Physical and Land Use Planning Act* (PLUPA), 2019, which authorizes a County Government the mandate of the restoration of land developed without appropriate authorization.
63. Nonetheless, as previously noted, the 3rd Respondent has affirmed that the 1st and 2nd Respondents initiated a change of user application, which was subsequently annulled. This serves as evidence that the statutory planning framework is in place and has been engaged. Pursuant to Section 78 of the same Act, any individual aggrieved by such a decision is obliged to appeal to the County Physical and Land Use Planning Liaison Committee. The Petitioners have not demonstrated that they have exhausted this statutory remedy in accordance with the doctrine of exhaustion of administrative remedies.



64. The Petitioners assert that they have submitted multiple complaints from December 2020 to June 2024, including written reports to NEMA and the Kilifi County Government, as well as engaging in informal mediation with the 1st and 2nd Respondents. While this demonstrates some level of administrative engagement, the doctrine of exhaustion mandates not only the initiation of complaints but also the pursuit of all available statutory appeal mechanisms to their conclusion under the relevant Acts before approaching the Court.
65. Considering that this petition was multifaceted by choice and guided by the Supreme Court decision, I find reassurance in the judgment in *Nicholas v Attorney General and Seven Others; National Environmental Complaints Committee and Five Others (Interested Parties)* (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023). In this decision, the Supreme Court recently affirmed that parties should not be restricted in their access to justice when seeking to raise their issues. The sole condition is that the forum in which they seek redress must be efficacious and adequate, and that the doctrine of abstention or exhaustion is applied by the courts where such a primary forum exists on a case-by-case basis.
66. Considering the grievances raised by the Petitioners in this case, it has not been demonstrated that the relevant agencies and bodies sued have failed to fulfill their statutory mandates to justify the intervention of the Constitutional Court.
67. In light of the above, it is evident that the Petitioners have approached this Court without first exhausting the statutory dispute resolution mechanisms available under the relevant legal frameworks. The issues identified, including environmental compliance, licensing, land use, and planning permissions, fall under the jurisdiction of specialized administrative bodies and tribunals established, among other laws, under EMCA, the *Physical and Land Use Planning Act*, the *Tourism Act*, and the Kilifi County Liquor Control Act. Without proof that these remedies were pursued to completion, the petition is premature and violates the doctrine of exhaustion.
68. Accordingly, the petition dated 1st July 2024 is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 3^{1ST} DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Mutugi, for the Petitioners

Mr. Makambo, for the 1st and 2nd Respondents

Ms. Mwabaya, for the 3rd and 4th Respondents

Ms. Nyagah for the 5th Respondent.

Mr. Ojwang, for the 6th Respondent.

Happy: Court Assistant

