



Registered Officials and Trustees of Jesus Celebration Centre v National Environment Management Authority & 2 others; Darajani Hotel Limited & 3 others (Interested Parties) (Environment and Land Petition E020 of 2024) [2025] KEELC 5264 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5264 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND PETITION E020 OF 2024**

**YM ANGIMA, J
JULY 10, 2025**

BETWEEN

THE REGISTERED OFFICIALS AND TRUSTEES OF JESUS CELEBRATION CENTRE PETITIONER

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

NATIONAL ENVIRONMENT TRIBUNAL 3RD RESPONDENT

AND

DARAJANI HOTEL LIMITED INTERESTED PARTY

BRIDE HOTEL LIMITED INTERESTED PARTY

REGISTERED OFFICIAL AND TRUSTEES OF LIFE TRANSFORMING CENTRE INTERESTED PARTY

REGISTERED OFFICIALS AND TRUSTEES OF MOUNTAIN OF SALVATION CHURCH CENTRE INTERESTED PARTY

RULING

A. Introduction.

1. By a petition dated 10.09.2024 and amended on 18.02.2025 the petitioner sought the following reliefs;



- a. A declaration that The *National Management and Coordination (Noise and Excessive Vibration Pollution) (Control Regulations 2009)* are unconstitutional for being implemented after the 28th August 2010 without being subjected to public participation pursuant to Articles 69 (1) (d) and 118 (1) (b) and 262 (7) of the *Constitution* of Kenya.
 - b. A declaration that The *National Management and Coordination (Noise and Excessive Vibration Pollution) (Control Regulations 2009)* are inconsistent with Article 32 of the *Constitution* of Kenya in so far as they seek to limit the full enjoyment of the fundamental rights and freedoms conferred upon the petitioners under Article 32 of the Constitution of Kenya and as provided in the Holy bible.
 - c. A declaration that the God worshipped by the petitioners and who is recorded in the Holy Bible loves noise, shouting, and use of music by those who worship Him in truth and in Spirit.
 - d. A declaration that a denial of the right to use a public address system, make noise, shout, use music equipment such as keyboard, guitars, drum sets and such other instruments while worshipping their God is a denial and breach of fundamental freedoms and rights for Pentecostal churches as guaranteed under Article 32 of the *Constitution* and the Christian Bible.
 - e. An order of Judicial Review in the form of orders of certiorari quashing The *National Management and Coordination (Noise and Excessive Vibration Pollution) (Control Regulations 2009)*.
 - f. An order of Judicial Review in the form of orders of certiorari calling Net Appeal No. E007 Of 2023 - *Mombasa Darajani Hotel Ltd -Vs- Nema Jesus Celebration Centre* Life Transforming Church Mountain Of Salvation for quashing.
 - g. An order certifying that the matters raised in this Petition are those contemplated under Article 165(4) of the *Constitution* and the file be forwarded to the Honourable Chief Justice to constitute an uneven bench of not less than three judges to hear and determine the Petition.
 - h. There do issue an order of judicial review in the form of orders of prohibition barring the 3rd Respondent from hearing appeals founded on alleged violations of the *National Management and Coordination (Noise and Excessive Vibration Pollution) (Control Regulations 2009)*
 - i. Costs of the petition.
 - j. Such other orders as this honourable court shall deem just.
2. The petition was based upon the grounds set out in the body of the petition and the contents of the supporting affidavit and supplementary affidavit sworn by Dr. Charles K. Muoki on 10.09.2024 and 19.02.2025 respectively. The petitioners pleaded that the *National Management and Coordination (Noise and Excessive Vibration Pollution) Control Regulations 2009* (the Regulations) were unconstitutional for allegedly violating their freedom of worship and for having been implemented without undergoing the process of public participation. They were also aggrieved by the judgment of the National Environment Tribunal (NET) dated 19.11.2024 in NET Appeal No. E007 of 2023 – *Mombasa Hotel Ltd vs NEMA Jesus Celebration Centre* (the appeal) in which they were ordered to abate noise pollution by soundproofing their church.
 3. The record shows that simultaneously with the filing of the petition, the petitioners filed a notice of motion dated 10.09.2024 seeking some interim orders pending the hearing and determination of the petition. In particular, they sought a conservatory order in the nature of an order of prohibition to



stop NET from hearing and determining the appeal. They also sought to have the matter referred to the Hon. Chief Justice for constitution of a bench of not less than 3 judges to determine the petition.

B. 1st respondent's preliminary objection.

4. The record shows that the 1st respondent filed a notice of preliminary objection dated 09.11.2024 objecting to both the petition and the application for interim orders on the ground that the petition violated the doctrines of exhaustion and constitutional avoidance. In particular, it was contended that there was a pending appeal before NET which was the right forum for canvassing the petitioners' grievances.

C. Responses by the rest of the parties.

5. There is no indication on record of the rest of the respondents and the interest parties having filed any responses to either the petition or the notice of preliminary objection.

D. Directions on submissions.

6. When the matter was listed for directions it was directed that the said preliminary objection shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange submissions on the preliminary objection. The record shows that the 1st respondent filed submissions dated 05.05.2025 whereas the petitioners filed submissions dated 21.01.2025.

E. Issues for determination.

7. The court has considered the 1st respondent's notice of preliminary objection dated 04.11.2024 and the material on record. The court is of the view that the main issues for determination are the following;
 - a. Whether the 1st respondent's preliminary objection is merited.
 - b. Who shall bear costs of the preliminary objection.

F. Analysis and determination

a. Whether the 1st respondent's preliminary objection is merited

8. The court has considered the material and submissions on record. The 1st respondent submitted that the petitioners had not exhausted alternative statutory remedies for resolution of their grievances. It was submitted that NET was properly seized of the appeal and that it delivered a valid judgment which could only be challenged in the prescribed manner. The 1st respondent cited the case of *Geoffrey Mutbiga Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others* [2015] eKLR in support of its submission.
9. The petitioners, on their part, submitted that the 1st respondent's preliminary objection was not a proper preliminary objection as known to law since it would require some form of investigation into factual matters. It was further submitted that the constitutional reliefs and declarations sought in the amended petition could only be canvassed before a court of law and not the NET. As a result, the court was urged to overrule the preliminary objection.
10. It is common ground that the appeal which was pending before the NET at the time of filing the petition has since been determined. The court is of the view that once a decision of NET is delivered



pursuant to Section 129 of *Environmental Management and Coordination Act* (EMCA), any party thereby aggrieved may lodge an appeal to this court pursuant to Section 130 of *Act*.

11. The court is further of the view that where parliament has provided a specific mechanism or procedure for resolution of a particular grievance such procedure must be strictly followed. In the case of *Njenga Karume vs Speaker of the National Assembly* Civil Application 92 of 1992 [1992] KECA (29 May 1992) (Ruling) it was held, inter alia, that;

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions.”

12. The court is thus of the opinion that it was not open for the petitioner to invoke the original jurisdiction of the court in order to challenge the appeal or the decision of the NET upon determination of the appeal. This court’s jurisdiction under Section 130 of *EMCA* is strictly appellate. The court thus agrees with the 1st respondent that the notice of motion dated 10.09.2024 is misconceived and that the petitioners could not validly challenge the judgment of NET vide a constitutional petition.

13. In the case of *Michael Kigia vs AFC and 4 Others* [2019] eKLR the petitioner had lost a civil suit before the Chief Magistrate’s Court at Meru and he decided to file a constitutional petition to quash the judgment and decree of the trial court instead of pursuing an appeal before the Environment and Land Court. In striking out the said petition, this court held as follows;

“22. . The question which calls for an answer is whether the Petitioner’s grievances can be ventilated through a constitutional petition. In the case of *MWK Vs AG* [2017] eKLR, the Petitioner (a minor) was convicted of a criminal offence by the Magistrate’s court. She thereupon filed a constitutional petition alleging violation of her constitutional rights by officers of the Kenya Police Service. She also sought an order to quash the criminal conviction on account of the alleged constitutional violations.

23. In considering whether such a conviction could be quashed through a constitutional petition, Mativo J stated as follows;

“...in my view, the Petitioner ought to have challenged the said conviction either by way of an appeal or by way of a revision as provided for under the provisions of the *Criminal Procedure Code* [39]. There is a well laid down statutory mechanism of challenging the said conviction. It would be inappropriate for this court to exercise its jurisdiction and quash the said decision.” (Emphasis added).

24. The said judge also referred to the Supreme Court decision in *Yusuf Gitau Abdallah Vs Building Centre (K) Ltd and 4 Others* [2014] eKLR and quoted the following passage therefrom;

“A party cannot be heard to move the court in glaring contradiction of the judicial hierarchical system of the land on the pretext than



an injustice will be perpetrated by the lower court. Courts of justice have the jurisdiction to do justice and not injustice. However, the law acknowledges that judges are human and are fallible hence the judicial remedies of appeal and review. A party cannot in total disregard of these fundamental legal redress framework moves the apex court.”

14. The court is thus of the view that the petitioners are not at liberty to short-circuit the judicial process by directly invoking the *Constitution* for enforcement of fundamental rights and freedoms instead of preferring an appeal against the decision of NET as stipulated under Section 130 of *EMCA*. The court, therefore, agrees with the 1st respondent’s contention that the petitioners cannot validly challenge the decision rendered by a tribunal of competent jurisdiction in a manner not provided for under the law.
15. However, regarding the other general reliefs and declarations sought by the petitioners in their petition, the court is of the view that the petition is severable so that the court may deal with the constitutional issues raised therein without touching on the judgment of NET. The court agrees with the petitioners’ submissions that the NET would have no jurisdiction to grant all the reliefs sought on the petition especially the declaration sought on the constitutionality of the impugned Regulations.
16. In the event, the court is inclined to allow the petition to proceed subject to the petitioners amending the petition to drop any challenge to the proceedings and judgment of NET. The court has already taken the view that the decision of the NET can only be challenged before this court not in its original but appellate jurisdiction.

b. Who shall bear costs of the preliminary objection

17. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. In view of the fact that the 1st respondent’s preliminary objection has partly succeeded and partly failed the court is of the view that costs of the preliminary objection should be in the cause.

G. Conclusion and disposal orders.

18. The upshot of the foregoing is that the 1st respondent’s preliminary objection dated 04.11.2024 succeeds only in part. Consequently, the court makes the following orders for disposal thereof;
 - a. The 1st respondent’s notice of preliminary objection dated 04.11.2024 succeeds in part in consequence whereof the petitioners’ notice of motion for conservatory orders is hereby struck out.
 - b. The petitioners shall within 14 days from the date hereof amend their petition to exclude any challenge to the judgment of NET delivered in its appellate capacity.
 - c. Costs of the preliminary objection shall be in the cause.
 - d. The court shall address the issue of certification of the petition and its referral to the Hon. Chief Justice to appoint a bench to determine the petition after the parties file submissions on the issue. The petitioner shall file and serve its written submission within 21 days from the date hereof whereas the respondents shall do likewise within 21 days upon the lapse of the petitioner’s period. The submissions shall not exceed 5 typed pages, double spaced, and in font size 12.



e. Ruling on 06.11.2025 on the issue of certification.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 10TH DAY OF JULY, 2025.

.....

Y. M. ANGIMA

JUDGE

In the presence

Gillian – Court Assistant

Mr. Mkombe holding brief for Mr. Munyithya for petitioners.

No appearance for 1st respondent

Mr. Kemie for the AG for 2nd and 3rd respondents

No appearance for the interested parties

