



**Jaygee Limited & another v Githome t/a The Wine & Bottle Bar & Grill & 2 others
(Environment & Land Case 5 of 2023) [2024] KEELC 558 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 5 OF 2023
AA OMOLLO, J
FEBRUARY 8, 2024**

BETWEEN

JAYGEE LIMITED 1ST APPLICANT

WESTWOOD PARK LIMITED 2ND APPLICANT

AND

**DAVID KINYUA GITHOME T/A THE WINE & BOTTLE BAR &
GRILL 1ST RESPONDENT**

CITY COUNTY GOVT OF NAIROBI 2ND RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**

RULING

1. The Applicants filed a Notice of Motion dated 25th July 2023 seeking for the following orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. Spent
 - e. That the Honourable Court be pleased to direct a notice of institution of the suit herein to issue to all residents of the area around the 1st Defendants Wine & Bottle Bar and Grill Restaurant along Vela Close in Wetlands by way of public advertisement in a Daily Newspaper of wide circulation within the Republic of Kenya and any person whose benefit the suit is instituted or defended my enter appearance to join as a Co Plaintiff or Defendant as the case may be within 21 days from the date of the Notice hereof.



- f. That pending hearing and determination of this suit, a temporary order of injunction be and is hereby issued, restraining the 1st Defendant/Respondent whether by himself or anyone working under him or trading as the Wine & Bottle Bar and Grill Restaurant from causing or continuing to cause noise pollution in or from the said Wine & Bottle Bar and Grill Restaurant along Vale Close Road in Westland's area in Nairobi City County.
- g. That pending hearing and determination of this suit, a temporary order of injunction be and is hereby issued, restraining the 1st Defendant/Respondent whether by himself or anyone working under him or trading as the Wine & Bottle Bar and Grill Restaurant from directing his customers or anyone visiting the said Wine & Bottle Bar and Grill Restaurant along Vale Close Road in Westland's area in Nairobi City County from parking their vehicles or any automotive on or obstructing free flow of traffic along Vale Close Road in Westland's area in Nairobi City County.
- h. That costs of this Application be provided for.
2. The Plaintiffs' motion was supported by an affidavit and supplementary affidavit sworn on 25th July 2023 and 13th October 2023 respectively by Shamil Manek, a manager and duly authorised to act on behalf of the 2nd Plaintiff's Company which is a management company for The Westwood Building, a 9-storey building comprising 18 tenants leasing office space on LR. NO.1870/1/610 owned by the 1st Plaintiff.
3. The Plaintiffs stated that they have lodged this suit for their benefit and that of their tenants and residents of the area and neighbourhood of "The Westwood" seeking to stop the 1st Defendant's noise and sound pollution as well as obstruction of a public road after complaints to the 2nd and 3rd Defendants on the matter have been unattended for a prolonged period of time.
4. Mr. Manek deposed that the 1st Defendant has at all material times been engaging in noise pollution particularly playing loud music in the course of his business at the Wine & Bottle Bar and Grill Restaurant along Vale Close Road in Westland's on a daily basis from 6:00 p.m. to about 2:00 am thereby causing disturbance, nuisance and noise pollution to the Plaintiffs tenants and neighbors living within the area of the 1st Defendant's business, and has threatened to continue with the sound pollution despite protests by the Plaintiffs.
5. Further that the 1st Defendant has failed to provide parking facilities for his customers directing them to park along and on Vale Close Road causing obstruction or blocking the Plaintiffs tenants and their visitors from accessing "The Westwood" building and access to other areas through the only public road linking it to Ring road in Westland's.
6. It is deposed that the noise and sound pollution coming out of the 1st Defendants business is not licensed by the 2nd and 3rd Defendants and if any such license or permit exists, the same was issued without prior public consultation of the Plaintiffs and or their tenants leasing office space at "The Westwood" who are directly affected by the said pollution thus such permit is illegal, unlawful and irregular. That the relevant laws authorizing issuance of noise permits provide for issuance of a permit limited to 3 months only upon prior Environment Impact Assessment Project Report and or Study Report which encompasses public participation as a mandatory requirement.
7. The Applicants stated that the 1st Defendant's actions or noise pollution is not only harmful and hazardous to human health and the environment but also unlawful, illegal, breach of and an offence contrary to sections 2, 101,102 and 103 of the Environment Management Coordination Act and



provisions of the Environment Management Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations 2009 and Articles 42 and 69 (l)(g) of *the Constitution* of Kenya.

8. The Applicants contended that despite complaints to the 2nd and 3rd Defendants who are legally obligated to prevent/stop noise pollution and the obstruction of public roads within the City County of Nairobi including the subject area, they have in breach of their statutory obligations neglected to intervene and stop the noise pollution or obstruction on Vale Close Road by the 1st Defendant and his customers thus directly causing the Plaintiffs, their Tenants and Neighbors within the area hardship, inconvenience and irreparable loss.

Response by the 1st and 2nd Defendants

9. The 1st Defendant filed a replying affidavit and further affidavit sworn by David Kinyua Gathome on 14th August 2023 and 5th October 2023 respectively while the 2nd Defendant filed grounds of opposition dated 8th August 2023.
10. The 1st Defendant averred that the area is not in a residential zone but commercial and that he applied for and was duly issued with all the relevant permits and licences to operate the Club by the 2nd & Defendant. He added that that neither have the Applicants in their plaint made prayers for the cancelling of the licenses and permits issued nor invoked and exhausted the mechanism of challenging them.
11. The 1st Defendant contended that the mandate to inspect the club's licences and permits falls within the sole purview of the 2nd Defendant and not the Plaintiffs. That it is not up to every individual or entity to subjectively determine the level of noise or excessive vibration. That Regulation 6 as read with Zone E under the First Schedule of the Environment and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulation, 2009, establish noise standards and provides that measurements to determine whether or not noise or vibration levels exceed the permissible levels are required to be taken by a relevant lead agency, failing which the measurements shall be taken by a person duly authorized by the Authority, who is knowledgeable in the proper use of the measuring equipment.
12. Mr. Githome stated further that the 2nd & 3rd Defendants/Respondents have in-fact inspected the club premises and issued the club with separate Improvement Notices pertaining to alleged noise complaints, namely a Noise Improvement Notice by the 2nd Defendant's Environment and Natural Resources Department dated 16th March 2023, and an Improvement Notice by the 3rd Defendant's Environmental Inspector made on the 13th June 2023.
13. Also, that the 1st Defendant commissioned M/S Green Builders & Planning Consultants Limited (EIA/EA Reg. No. 9571) to carry out an Environmental Audit (EA) who prepared a Report dated 29th June 2023 and duly submitted the same to the 3rd Respondent/Defendant, NEMA, which acknowledged receipt of the same on the same date. Consequent to the report, the 1st Defendant invited both Nairobi City County & NEMA officials to assess the club's compliance with noise regulations, and its officers conducted a series of impromptu visits to the club but did not leave any complaint or adverse recommendation, and were duly satisfied upon conducting a noise survey report which is in still in their custody.
14. The 1st Defendant added that he procured an Annual Noise Pollution Audit Report in respect of the operations of the club, which was conducted with Public Participation by issuing Questionnaires to the immediate and surrounding neighboring businesses and premises, on the 25th August 2023, whereby only two (2) out of the twenty three (23) participants were of the view that the same causes noise pollution and that their activities have been affected as a result of the said noise pollution.



15. Further, that among the parties opposing the operation of the club is Beyond Flavours, a restaurant located within the same mall as the club and serves alcohol, food and beverages, and is thus in direct competition with them, hence the complaint cannot be said to be objective but conceivably tainted by business rivalry.
16. The 1st Defendant stated that with regard to the allegations of the club causing obstruction on Vale Close road, the issues of parking management or obstruction on roads and highways falling outside the precincts of the Club are traffic functions beyond the control or purview of his club and the Plaintiffs should pursue with the National Police Service and the National Transport and Safety Authority pursuant to Section 69 of the [Traffic Act](#) Cap 403 Laws of Kenya as these are the entities legally mandated to regulate such parking, and the court cannot act in vain by requiring him to police its patrons outside the club.
17. Further, that the Club provides ample Parking for up-to 30 motor vehicles within its premises, cannot be held liable for third party acts beyond its control and has engaged 3 traffic marshalls to ensure that there is no obstruction by patrons of the club to Vale Close Road and Ring Road Parklands.
18. The 1st Defendant also stated that he also engaged the County Government to assess the traffic situation at the club and arrive at an independent subjective conclusion, after which it prepared a Traffic Impact Assessment Report, which exculpates it from any of the alleged wrongdoing and corroborates the traffic control measures taken by it.
19. He alluded that the dispute before this court, lies in the first instance to the National Environment Tribunal by way of an appeal by virtue of Section 129 (1) of the [Environmental Management and Coordination Act](#), thus the Plaintiffs, if dissatisfied with the decision of the Authority, should have either challenged that decision before the Standards and Enforcement Review Committee established under the Act or prefer an appeal under Section 129 of Environmental Management and Coordination Act.
20. The 1st Defendant pronounced that this court has no original jurisdiction to address the Plaintiffs complaints pertaining to issuance of licenses & alleged noise pollution as a forum of first instance, but only on an appeal from the decisions of the 2nd and 3rd Respondents/Defendants, and that 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.
21. The 1st Defendant denied that the club is engaged in noise pollution by playing loud music at the Club or anywhere else at any time and contended that the physical planning user of its premises being commercial, falls under Zone E of the First Schedule of the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009 which permits noise and sound levels between 25 decibels and 35 decibels at night and between 55 decibels and 60 decibels at daytime. That the operations of the club do not produce noise and/or vibrations but only produce sounds within the permissible noise.
22. They added that the Plaintiffs fail to appreciate that applications for noise licenses issued under Regulations 16 (1) and 16 (2) of the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009 only pertain to instances where a sound source emits noise or vibrations exceeding the limits prescribed under the said regulations and the schedule thereto thus the 2nd & 3rd Defendants thus only issue noise licenses under the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009 to persons/applicants who have events or activities which are likely to exceed the maximum prescribed noise limits.



23. He said that 1st Defendant's herein only require noise licenses when they have events or activities which are likely to exceed the maximum prescribed noise limits and that the Plaintiffs have failed to demonstrate to this Court how they measured the noise levels emanating from the club to determine that the same were excessively loud and injurious to their health and that of the environment, or demonstrate that the noise complained of exceeds the permissible noise levels that are allowed for an establishment such as the one run by him.
24. In their grounds of opposition, the 2nd Defendant/Respondent stated inter alia that there is no valid company resolution presented by the Applicants demonstrating the authority to institute the present suit; that the 1st Applicant has not supplied a letter of authority as is required of a body corporate; the suit in general are full of unsubstantiated information; and that it is not clear whether the Applicants are complaining as residents or are business owners.
25. The 2nd Defendant contended that based on the material presented, the suit cannot be regarded as a representative suit. It is pleaded that the Applicants have not supplied the court with particulars of the alleged breach such as the decibel level of the alleged noise and the time when these alleged breaches occur, if at all. That they have no proof that the 1st Respondent could be lacking the requisite licenses and approvals and that it is well within the 2nd Respondent's mandate to issue licenses.
26. The 2nd Defendant added that the application does not disclose any discernible cause of action against it, no sufficient demonstration that any law has been breached and that the Applicants seek injunctive relief but have failed the 3-tier test for the same.

Submissions

27. The Plaintiffs filed submissions dated 11th October 2023 and the 1st Respondent filed submissions on 31st October 2023. The Plaintiffs addressed three main issues namely jurisdiction of the court, notice of institution of suit and injunctive relief. The Plaintiffs stated that the 1st Respondent objects the court's jurisdiction on the basis that the National Environment Tribunal has exclusive authority over environmental matters but submit that the court has jurisdiction since there is no appealable decision by the 2nd Respondent. Further they posit that section 3(3) of the Environment Management and Coordination Act (EMCA) and Article 42 and 70 of *the Constitution* grant the court authority to hear cases related to the right to a clean and healthy environment. In support they cited the case of *In Evergreen Apartments Management Limited v Foody Freshi t/a Hera Aqua Gardens & 6 others (Environment & Land Case E451 of 2021)[2022]KEELC 2858(KLR)(7 July 2022)(Ruling)* where the court observed that the court had jurisdiction to entertain a suit with similar issues as the instant one.
28. The Plaintiffs submit that they have sought for permission to issue a notice of the suit, emphasizing that the action is on behalf of numerous individuals sharing a community of interest. Relying on the provisions of Order 1 Rule 8 of the Civil Procedure Rules, they argue that the notice is crucial to prevent a multiplicity of suits and allow affected persons to join the proceedings. In support they cited the case of *Halima Mohamed Abdile & 3 others v Peter Kinyanjui & 38 others [2014] Eklr*.
29. It is also submitted that the Plaintiffs have satisfied the legal and evidential threshold for grant of the injunctive reliefs sought as discussed in the case of *Giella vs Cassman Brown & Company Limited 1973.E.A 358*. They also relied in the case of *J.S Muiru & 2 others v Tigoni Treasurers Limited & 2 others [2014] eKLR* where the court observed that although the said conditions/principles may not be applicable in environmental matters in a strict sense as they are applied in ordinary suits, an applicant must nonetheless demonstrate an arguable case that is not frivolous and further noted that in environmental matters it may be difficult to determine the question of damages as the damage may



not be easily ascertainable or even foreseeable and that once there is damage to the environment, the damage is irreversible and thus the precautionary principle would be applicable where there are any threats to the environment to prevent environmental degradation.

30. The Plaintiffs asserted that they have a prima facie case against the 1st Defendant for noise pollution, obstruction of public rights of way, and violation of environmental regulations, thus injunctive relief is necessary to prevent irreparable loss and maintain a balance of convenience. It is their averment that in as much as the 1st Respondent has produced notices from the 2nd & 3rd Respondents whereby the two statutory bodies issued notices confirming engagement over noise pollution and proposed various means by which to remedy the situation, the 2nd & 3rd Respondents have not made any other efforts to ensure that the 1st Respondent complied with the proposals and/or issued any communication confirming compliance with the proposals and or that the situation has been remedied.
31. The 1st Defendant relied on Order 4 rule 1 of the Civil Procedure Rules to submit that no verifying affidavit has been filed by the 1st Plaintiff, Jaygee Limited thus the said company must be struck out from this suit. He submits that the suit as brought by the 2nd Plaintiff who has not demonstrated that it has obtained authority to bring this suit on behalf of the 1st Plaintiff, by tendering both a company resolution and an appropriate authority to act and plead on behalf of the 1st Plaintiff. In support he cited the case of Korica (U) Limited & another v Kenua Ports Authority [2008]eKLR and Waverley Estate Ltd vs Alex Gitata Mwangi[2008]Eklr.
32. On the jurisdiction of the court, the 1st Defendant submitted that the Plaintiffs have bypassed the National Environmental Management Authority (NEMA), which is better equipped to handle their complaints and have not exhausted statutory dispute resolution mechanisms provided for in the environmental regulations. That the Environmental Management and Coordination Act (EMCA) establishes NEMA as the regulatory body, and that the plaintiffs should have appealed to the National Environment Tribunal before approaching the court.
33. He went on to state that this court has no original jurisdiction to address the Plaintiffs complaints pertaining to issuance of licenses & alleged noise pollution as a forum of first instance. The 1st Defendant submits that he obtained all necessary approvals and licenses for its operations, having been peacefully operating since July 2021 without any prior complaints, except for the current suit. Further that the club denies engaging in alleged noise pollution and challenges the Plaintiffs' to provide evidence supporting their claims.
34. Further that the Plaintiffs have failed to demonstrate how they measured the noise levels emanating from the club and whether it exceeds permissible levels as outlined in environmental regulations stating that the club's operations fall within the prescribed noise levels and that the Plaintiffs lack the expertise to accurately measure noise pollution. He argued that the applicants did not meet the legal threshold for issuing an injunction against the club.

Issues for determination

- a. Jurisdiction of the court
- b. Locus standi of the Plaintiffs
- c. Whether notice of institution of suit should be issued
- d. Whether the injunctive relief should be granted
- e. Cost



Jurisdiction of the court

35. The 1st Defendant argued that the dispute such as the one brought by the Plaintiffs lies in the first instance to the National Environment Tribunal by way of an appeal by virtue of Section 129 (1) of the *Environmental Management and Co-ordination Act*. I think otherwise because even in instances where licences have been issued and there is a violation of the rights complained of which is totally not dependant on the issuance of the licences, any aggrieved party would lodge a complaint against a breach of such a right.
36. Under Sections 4 and 13 (1) of the Environment Land court Act this court has the legal mandate to hear any matter related to environment and land. However, Section 129 provides for Appeals to the Tribunal by any party aggrieved by refusal, transfer, restriction or limitation of their license. As discussed by the Supreme Court in their recent decision in Petition No. E007 OF 2023 between Abidha Nicholus Vs The Attorney General & 8 thus;

“

“(97) In this context, and in the exercise of these powers, Parliament enacted the Environment and *Land Act* 2011, (No. 19 of 2011) and by Section 4 thereof established the ELC. Its jurisdiction is as provided for in Section 13 with Section 13 (1) specifically outlining that the court ‘shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 163(2)(b) of *the Constitution*’. Section 13(2) then grants express and original jurisdiction in matters;

- (a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

And further provides;

“Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of *the Constitution*”.

(98) These provisions must be read in contrast to those in EMCA which provide for instances where disputes pertaining to compliance with breach and/or violations of the provisions of EMCA and which disputes ought to be lodged with and/or addressed by NET, which is established pursuant to the provisions of Section 125 of the said Act. Redress for constitutional violations is not part of that mandate.”



37. The Plaintiffs herein have brought this suit to address what they term as a violation of their Constitutional right to a clean and healthy environment by the operation of the 1st Defendant's club stating that the noise from the premises pollutes the air and also that there is obstruction of the public road to their premises. Guided by the holding in above case, I find that this court has jurisdiction to hear and determine this suit filed by the Plaintiffs.

Locus standi of the Plaintiffs

38. The 1st and 2nd Defendants contended that the Plaintiffs lack locus standi to institute this suit on the grounds that there is no company resolution to institute the suit and that the 1st Applicant/Plaintiff has not supplied a letter of authority as is required of a body corporate. My answer in one sentence is that the speaking for and protection of the environment from harm does not require any authority from any organization. Any person can bring a suit where there is a violation whether the person is directly affected or otherwise. Violations on the environment touch not only on private rights but also on natural rights.
39. Further article 22(1) of *the Constitution* provides that "Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened". The Plaintiffs have stated that they lodged this suit for their benefit and that of their tenants and residents of the area and of their neighborhood. Their intention is to speak for themselves and for others and hopefully during the hearing of this case, for the environment too. The objection questioning the locus of the Plaintiff is hereby dismissed.

Whether notice of institution of suit should be issued

40. The Plaintiffs pleaded that they lodged this suit for their benefit and other persons affected by the noise pollution and obstruction caused by the club. Order 1 Rule 8 of the Civil Procedure Rules provides as follows: -
- “ 1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.
 - 2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
 - 3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) may apply to the Court to be made a party to such suit.”
41. In the case of *Yiapas Ole Seese & 4 others -Vs- Sakita Ole Narok & 2 others (2008)* Eklr the Court of Appeal stated as follows: -
- “The whole purpose of provisions of Order 1 Rule 8 is to ensure that all persons with unlitigated similar cause of action are desirous of having their cause determined are included in this suit for their own convenience and to obviate a multiplicity of suits. Hence the need to notify them of the Institution of the suit so that in case any of them wishes to take part he is given the opportunity to do so.....Until notices under orders 1 Rule 8 Civil



Procedure Rules, are served, one may not know whether or not they will accept being treated as Plaintiffs. Services of the notice as we stated earlier. It to give them an opportunity to make an election whether or not to become parties."

42. In avoidance of multiplicity of suits and having a conclusive determination of the issue in contention, it is right for this court to allow the Plaintiffs issue a public notice to invite all those with similar cause of action included in the suit.

Whether the injunctive relief should be granted

43. The Plaintiffs submitted that they had met the threshold for grant of a temporary injunction orders prayed. To demonstrate that they have a prima facie case, the 1st Applicants/Plaintiffs have pleaded that they are the registered owner of the 9 storey commercial building, The Westwood, along Vale Close road managed by the 2nd Plaintiff and that the 1st Defendant/Respondent operates a club near them that causes noise pollution and obstruction of the road.

44. In demonstrating that the 1st Defendant was engaging in noise pollution they produced notices from the 2nd and 3rd Respondent confirming the same and the proposed recommendations to the 1st Defendant on how to remedy the situation. In contesting the application, the 1st Defendant argued that prior to commencing operations of the Club in July 2021, he applied and was granted all the necessary approvals and licenses to engage in the business which the licenses have not been revoked.

45. I have seen that the 1st Defendant has annexed copies of licenses, permits and approvals which the Plaintiffs have claimed to have been obtained illegally and which is an issue that can only be determined at the hearing of the main suit. At this interlocutory stage of the proceedings, the court will not delved into analyzing the authenticity of the documents annexed to the affidavits in support of and against the application.

46. The second requirement is that the Applicants must demonstrate they will suffer irreparable harm that cannot be compensated by way of damages. The term irreparable harm is harm or injury that cannot be adequately compensated by any amount of monetary award or one which cannot be reversed to the state before the damage.

47. The Halsbury's Laws of England, 3rd Ed, Vol. 21, paragraph 739, pg 352 reads:

"It is the very first principle of injunction law that prima facie the Court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy. Where the Court interferes by way of an injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds first, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter in question."

48. In the instant suit, there was no evidence availed to show that the effect of the noise on the applicants and the neighborhood was irreversible wherefore compensation would not be an adequate remedy if the claimant succeeds. It is my considered view and I so hold that the Applicants can be compensated by way of damages for the inconveniences suffered. On the heading of the balance of convenience,



the 1st Defendant's report dated August 2023 and annexed as DKG 12 makes provision that they are cognizance of their obligations of not polluting the environment. The Applicants did not file an expert report at this stage to show the noise levels emitted by the 1st Defendant was beyond the permissible levels allowed by the Regulations. Consequently, weighing the scales, the balance of convenience tilts in favour of the 1st Defendant.

49. In conclusion, only one prayer is granted THAT a notice of institution of the suit herein shall issue to all residents of the area around the 1st Defendants Wine & Bottle Bar and Grill Restaurant along Vela Close in Wetlands by way of public advertisement in a Daily Newspaper of wide circulation within the Republic of Kenya and any person whose benefit the suit is instituted or defended may enter appearance to join as a Co-Plaintiff or Defendant as the case may be within 21 days from the date of the publication of the notice.
50. The orders of temporary injunction sought is dismissed for want of merit. Each party to bear their costs of this application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2024

A. OMOLLO

JUDGE

