



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURT

ELC CASE NO. 130 OF 2019

SOHAIL REGENCY MANAGEMENT COMPANY LIMITED.....PLAINTIFF

VERSUS

DÉJÀ VU COCO GLAM NAIL AND TIPSY CORNER.....1ST DEFENDANT

KENYA CONTINENTAL HOTEL.....2ND DEFENDANT

COUNTY GOVERNMENT OF NAIROBI.....3RD DEFENDANT

NATIONAL ENVIRONMENT AUTHORITY.....4TH DEFENDANT

(CONSOLIDATED WITH)

ELC PETITION NO. 2 OF 2017

IN THE MATTER OF CONTRAVENTION OF RIGHTS OR FUNDAMENTAL

FREEDOMS UNDER ARTICLE 1 3, 10,19-24, 28, 31 -33 (3), 35, 40,

42-43, 69 & 70 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ENFORCEMENT OF ENVIRONMENTAL RIGHTS

UNDER ARTICLE 70 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER

SECTION 3 OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT, 1999;

AND

IN THE MATTER OF REGULATION 3 OF THE ENVIRONMENTAL MANAGEMENT

AND COORDINATION (NOISE AND EXCESSIVE VIBRATION POLLUTION)

(CONTROL) REGULATIONS, 2009

AND

IN THE MATTER OF THE PUBLIC HEALTH ACT CAP, 242 LAWS OF KENYA UNDER SECTION 115

AND

IN THE MATTER OF THE INHERENT JURISDICTION OF THIS HONOURABLE COURT & THE

GENERAL PRINCIPLES OF NATURAL JUSTICE AND THE RULE OF LAW

AND

IN THE MATTER OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948 AND THE

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND

FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

PELVIC CHUNILAL SHAH.....1ST PETITIONER

AZIM BUTT.....2ND PETITIONER

(suing on their own behalf and on behalf of the residents of sohail regency)

AND

CELINO LIMITED.....1ST RESPONDENT

KENYA CONTINENTAL HOTEL.....2ND RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....3RD RESPONDENT

COUNTY GOVERNEMENT OF NAIROBI.....4TH RESPONDENT

JUDGMENT

ELC NO. 130 OF 2019

1. In the Complaint dated 9th April, 2019, the Plaintiff, Sohail Regency Management Company, pleaded that the 2nd Defendant, Kenya Continental Hotel, was at all material times the 1st Defendant's Landlord; that in the year 2018, the 2nd Defendant leased the premises to the 1st Defendant (Déjà vu t/a Coco Glam Nail and Topsy Corner) to operate a night club and that the 1st Defendant thoroughly converted the premises into an enterprise that is causing noise and vibrations affecting its premises.

2. In the Complaint, the Plaintiff has sought for the following orders;

a) A declaration that the 2nd Defendant is not entitled to use its premises for any purpose other than for residential purposes.

b) A permanent injunction do issue against the 2nd Defendant, their servants, agents, representatives, tenants and/or any other person(s) acting on their stead prohibiting them from renting, leasing, subleasing and/or subletting the premises for any further operation of live music, streamed music and/or any other kind of noise that would destruct the quiet and peaceful possession of the Plaintiff.

c) A permanent injunction do issue against the 1st Defendant, their servants, agents, employees, representatives, tenants and/or any other person(s) acting on their stead prohibiting them from any further operation of live music, streamed music and/or any other music within Déjà vu club situated along Rhapta Road, Nairobi.

d) A permanent injunction do issue against the 3rd Defendant, their servants, agents, employees, representatives, tenants and/or

any other person(s) acting on their stead prohibiting them from issuing licences or approvals allowing the carrying out of commercial activities within the 2nd Defendant's premises.

e) Damages for nuisance.

f) Costs.

g) Interest on (e) and (f) above.

3. In the Plaintiff, the Plaintiff averred that in the year 2018, the 2nd Defendant leased the premises to the 1st Defendant to operate a night club; that the locality in which the said premise is situate is residential and that in breach of the law, the 2nd Defendant has wrongly converted its premise to the 1st Defendant for carrying on its business thereby permitting or causing the 1st Defendants workers to cause excessive noise and vibrations to come into and about the Plaintiff's premises.

4. The 2nd Defendant filed a Notice of preliminary Objection in which it averred that there is no cause of action disclosed by the Plaintiff against the 2nd Defendant in the Plaintiff; that the prayers sought for in the Plaintiff against the 2nd Defendant are incapable of being granted and that the prayers in the Plaintiff are unconstitutional.

5. The 3rd Defendant, Nairobi City County, filed a Defence in which it averred that it is unaware of any disturbances that are having the alleged adverse effects on the residents of the Plaintiff; that all due procedures were followed in the opening and licensing of Coco Glam and Tippy Corner and that the locality of the business in question is mixed user as evidenced by the location of the 2nd Defendant and the general establishments located along Rhapta Road, Westlands.

6. It was the averment of the 3rd Defendant that it is NEMA (National Environment Management Authority) that is mandated to control and regulate the noise in the environment and that the 3rd Defendant undertook due diligence by ensuring that all the requirements were met by the 1st and 2nd Defendants.

ELC PETITION NUMBER 2 OF 2017

7. In the Petition dated 3rd February, 2017, the two Petitioners described themselves as residents of Sohail Regency on Rhapta Road within Westlands area, Nairobi and the 2nd Respondent, Kenya Continental Hotel, as the Landlord of the premises leased by the 1st Respondent and operating as *Vineyard Bar and Restaurant* on L. R. No. 1870/VI/162 Rhapta Road.

8. The Petitioners averred that the residents of Sohail Regency have for decades enjoyed serene and peaceful surroundings within the residential area; that *Vineyard Bar and Restaurant* opened its doors in the year 2013 and that the said bar plays music throughout the night.

9. The Petitioners averred that the noise of music over aggravatingly amplified speakers resonates throughout the neighbourhood in deafening levels with no regard for the inconvenience and discomfort of the people in the vicinity and that they have made complaints to the 1st and 2nd Respondents because of the public nuisance through pollution of the environment.

10. It is the Petitioners' case that anyone who increases his volume of speaker with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear noise raised to unpleasant or obnoxious levels violates the right of others to a peaceful, comfortable and pollution-free life guaranteed by Articles 10, 42, and 69 of the Constitution.

11. The Petitioners averred that the 1st and 2nd Defendants have egregiously colluded to deny the Petitioners and their neighbours of their guaranteed rights under **Articles 42 and 69 of the Constitution** by purposefully playing loud music and that under **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**, every person should have in mind whenever they produce noise so as to prevent it from being loud, unreasonable, unnecessary or unusual.

12. In the Petition, the Petitioners have prayed for the following orders;

a) A declaration that the Respondents have violated the petitioner's rights to a safe, clean and healthy environment through the failure to abide to and implement the legal standards of noise allowed.

b) An order of Prohibition directed at the 1st and 2nd Respondents, their agents, servants and/or representatives and any other persons acting on their stead from any further operating of the DISCO or any other loud music within Vineyard Bar and Restaurant in excess of the provisions of Environmental Management and Coordination (Noise and Excessive Vibration and Pollution (Control)) Regulations, 2009 and/or conditions issued to the 3rd and 4th Respondents.

c) A declaration that the issuance of operation licences to entertainment premises designed to provide loud music and which operate in Residential areas is unconstitutional given that it commercializes rather than eliminates environmental pollution.

d) An order do issue against the 3rd and 4th Respondents requiring them to lay before this Honourable court, within a period to be determined by the court, a report on measures they have taken to eliminate noise polluting clubs and discotheques from within residential areas.

e) An order for general damages by the Respondents to the Petitioners for violating their right to a safe, clean and healthy environment.

f) Any other or further reliefs that this Honourable court may deem fit and just.

g) Costs of this Petition.

13. In reply to the Petition, the 1st Respondent's Director deponed that Sohail Regency is a recent development of apartments along Rhapta Road Westlands; that the said developments were done long after the 1st Respondent had taken occupation of its premises and that the area is now a mixed density with residential and commercial premises.

14. The 1st Respondent's Director deponed that the 1st Respondent does not play out loud music as alleged; that the 1st Respondent has put in Place adequate mitigation measures to prevent the noise levels emanating from its premises to tolerable and legally permissible limits and that the 1st Respondent is aware that everybody is entitled to a clean and healthy environment.

15. The 1st Respondent's Director deponed that the 1st Respondent's establishment matches the aesthetic values ideal for the area along Rhapta Road as per the zoning policy; that the 1st Respondent while conducting its business has always ensured that it complies with all the legal requirements and that residential premises developed within an area zoned as commercial will have to do with the acceptable noise levels set up for a commercial zone.

16. The 1st Respondent's Director deponed that Hub Consultants Limited, the Petitioner's agents, employed a wrong sound standard of 35dBA which corresponds to a silent zone such as a hospital, as stipulated in the standards set up by NEMA; that the said report was not submitted to NEMA and that the 1st Respondent has been operating within the limit of 55dBA stipulated for a commercial zone.

17. It was the deposition of the 1st Respondent's Director that the Petitioners' report failed to disclose a day time report when there was no music being played in the 1st Respondent's premises in order to determine the existing noise levels, which will be above 35dBA at every place; that the auditor's equipment wasn't calibrated and that after the survey that was conducted in the year 2015, the 1st Respondent undertook mitigation measures.

18. The 1st Respondent's Director finally deponed that the Petitioners should rely on a current report; that the 1st Respondent commissioned M/s Greenworld Ecosystem Consultants Limited which came up with a noise survey Report of March 2017 and that the Petitioners' suit is vitiated by misrepresentation and material non-disclosure.

19. The 2nd Respondent filed Grounds of Objection in which it averred that the prayers sought in the Petition do not relate to the 2nd Respondent and cannot be enforced as against the 2nd Respondent and that nothing has been shown to connect the 2nd Respondent with the business, operation and running of *Vineyard Bar and Restaurant*.

20. The 3rd Respondent's Director Compliance and Enforcement (NEMA) deponed that at no point during the subsistence of the issue at hand have the Petitioners brought the issue of the noise to the attention of the 3rd Respondent as alleged in the pleadings and that the 3rd Respondent can only exercise supervision where the act or omission by a party entrusted with the responsibility of protecting the environment has neglected to do so and such conduct has been brought to the attention of the 3rd Respondent.

21. The 3rd Respondent's Director deponed that pursuant to Gazette Notice number 177 of 2013, noise pollution is a devolved function of the County Governments and as such, it falls within the purview of the 4th Respondent and that the 3rd Respondent does not license nor prosecute noise pollution offenders.

22. The 4th Respondent's Director of Environment and Solid Management Sector deponed that they received complaints about the noise emanating from the premises of *Vineyard Wine Bar*; that a team of environmental officers from their office visited clubs within the premises and that the 4th Respondent issued notices to the establishment to lower the amplified sound to the required decibel levels, sound proof the club and carry out an Environmental Noise Level Survey to be submitted to Environment, Energy and Water Department.

23. According to the 4th Respondent, they measured the noise level on three different days for two consecutive weeks; that the noise expert gave them a report showing that *Vineyard Wine Bar* managed by the 1st Respondent was playing loud music beyond the allowed limits and that the average decibel (dB) reading of the premises was slightly above the requirements of the law.

24. The 4th Respondent's officer finally deponed that *Vineyard Wine Bar* management is striving to put measures and ensure that noise emitted from their premises is at minimum levels and that the 4th Respondent is keen of enforcing compliance of noise pollution regulations of 2009.

Submissions

25. The two suits proceeded by way of written submissions. The Petitioners' advocate submitted that the Petitioners' right to a clean and healthy environment are being violated by the Respondents; that under **Article 42 of the Constitution**, every person has the right to a clean and healthy environment and that under **Article 186 (2) of the Constitution**, a function or power that is conferred on more than one level of government is a function within the concurrent jurisdiction of each of those levels of government.

26. It was submitted that the Petitioners have complained about the Respondent's noise pollution from their establishment known *Déjà vu*, operated by the 1st Respondent on a property owned by the 2nd Respondent and that the 3rd and 4th Respondents have relegated their duties of ensuring that the acts and omissions of the 1st and 2nd Respondents are within the law.

27. Counsel submitted that this court must address its mind to the competing interests of the right of the 1st and 2nd Respondents to enjoy rights emanating from the use of their property and the duty of the 3rd and 4th Respondents in enforcing its constitutional and statutory mandate.

28. Counsel submitted that since *Vineyard Bar and Restaurant* opened its doors in 2013, it plays loud music throughout the night and that there has been tremendous economic loss to the Petitioners as several tenants have vacated the premises due to the loud music.

29. Counsel submitted that night clubs in their very nature are known to play loud music particularly at night time hours; that these are the hours when the residents retire to their houses and expect some comfort and repose and that the noise emanating from the *Déjà vu* deprive them of this environment. Counsel relied on the case of *Pastor James Jessee Gitahi & 202 Others vs Attorney General (2003) eKLR* and *Muimara Estate Residents Association vs Nairobi City County & 2 Others (2018) eLKR*.

30. The Petitioner's counsel finally submitted that the Plaintiff/ Petitioners' members deserve at a minimum the basic right to life and human dignity as provided for under **Articles 26 and 28** of the **Constitution** and that this court should put a stop to the violations of the Petitioners' constitutionally guaranteed human rights under **Articles 26, 28 and 42** of the **Constitution**.

31. The 1st Defendant, *Déjà vu*, submitted that parties are bound by their pleadings; that the 1st Defendant has no connection whatsoever with the entity known as "*Vineyard Bar and Restaurant*" and that the Plaintiff's assertions are in total bad faith, calculated to impugn and prejudice the 1st Defendant; that the 1st Defendant's establishment is known as *Déjà vu* and that its lease over the suit premises commenced on 9th April 2018.

32. Counsel for the 1st Defendant submitted that the 1st Defendant was not party to, or privy of the proceedings in ELC Petition number 2 of 2017; that the 1st Defendant has always been considerate and mindful of its neighbours and ensured that the noise levels do not exceed the NEMA prescribed sound limit levels and that the 1st Defendant has heavily invested in, and installed sound limits throughout the establishment which regulates the volume of the speakers particularly those on the outside.

33. The 2nd Respondent's counsel submitted that the Constitution protects both the rights of the Petitioners in the same manner as the rights of the 2nd Respondent in relation to ownership of property and that a property owner cannot be held responsible for the acts of a tenant who has been duly licensed to operate a legal and legitimate business.

34. Counsel submitted that the control of any excessive noise or activities can only be enforced by the police, the 3rd Respondent and the 4th Respondent and that the 2nd Respondent has no ability, capacity or authority to control the business of the 1st Respondent in the leased premises.

35. It was submitted that the 2nd Defendant/Respondent cannot be held vicariously liable for any acts of the 1st Defendant/Respondent unless there is evidence that the tenant was acting at the behest of the landlord.

36. The 2nd Defendant/Respondent's advocate lastly submitted that no cause of action has been disclosed by the Petitioners against the 2nd Defendant. Counsel relied on **Halbury's laws of England, 4th Edition Volume 36 at paragraph 73** where it was stated as follows;

"In judging the sufficiency of a pleading for this purpose, the court will assume all the allegation in it to be true and to have been admitted by the other party. If the statement of claim then shows on the face of it that the action is not maintainable or that absolute defence exists, the court will strike it out ..."

37. It was submitted that the 2nd Defendant/Respondent does not run, operate or do business known as *Vineyard Bar and Restaurant*, or *Déjà vu* nor operate a Disco complained of, determine or ascertain the permissible noise levels or enforce compliance with the law. It was submitted that the suit as against the 2nd Defendant/Respondent should be dismissed with costs.

Analysis and findings

38. The record shows that on 23rd July, 2021, the court ordered for the consolidation of ELC No. 130 of 2019 (a Plaintiff) and ELC Petition number 2 of 2017. In an interesting consent that was recorded by the parties on 28th August, 2021, the parties agreed to have the two matters proceed by way of written submissions, which the duly filed.

39. The consent by the parties to proceed with the two matters by way of submissions is interesting because unlike the Petition which has an accompanying affidavit and annexures, the Plaintiff was not supported by any form of evidence.

40. Indeed, although in the Plaintiff has averred that in the year 2018, the 2nd Defendant leased the premises to the 1st Defendant, *Déjà vu*, to operate a night club; that the locality in which the said premise is situated is residential and that in breach of the law, the 1st Defendant's agents are wrongfully causing excessive noise and vibrations to come into the Plaintiff's premises, no evidence was adduced to that effect.

41. Furthermore, the Plaintiff in ELC No. 130 of 2019 did not tender any evidence to show that the 1st Defendant, *Déjà vu*, which was established in the year 2018 is the same entity as *Vineyard Bar and Restaurant* which was allegedly established in 2013 and operated by the 1st Respondent in Petition No. 2 of 2017.

42. That being the case, it was rather casual for the parties to proceed with the Plaintiff by way of written submissions instead of calling viva voce evidence as is in the norm to prove the allegations raised in the Plaintiff. Having said so, it is my finding that the Plaintiff did not prove its case at all as against the Defendants. The Plaintiff's Plaintiff is therefore dismissed with no orders as to costs.

43. In respect to ELC Petition number 2 of 2017, the Petitioners' case is that as residents of Sohail Regency, they have for decades enjoyed serene and peaceful surroundings within the residential area; that *Vineyard Bar and Restaurant* opened its doors in the year 2013 and that the said bar plays music throughout the night.

44. The Petitioners informed the court by way of an affidavit that the noise of music over aggravatingly amplified speakers resonates throughout the neighbourhood in deafening levels with no regard for the inconvenience and discomfort of the people in the vicinity and that they have made complaints to the 1st and 2nd Respondents because of the public nuisance through pollution of the environment.

45. The 1st Respondent's Director denied the Petitioner's allegations and deposed that the 1st Respondent does not play out loud music as alleged; that the 1st Respondent has put in place adequate mitigation measures to prevent the noise levels emanating from its premises to tolerable and legally permissible limits and that the 1st Respondent is aware that everybody is entitled to a clean and healthy environment.

46. According to the 1st Respondent's Director, the 1st Respondent's establishment matches the aesthetic values ideal for the area along Rhapta Road as per the zoning policy; that the 1st Respondent while conducting its business has always ensured that it complies with all the legal requirements and that residential premises developed within an area zoned as commercial will have to do with the acceptable noise levels set up for a commercial zone.

47. The 1st Respondent's Director informed the court that Hub Consultants Limited, the Petitioner's agents, employed a wrong sound standard of 35dBA which corresponds to a silent zone such as a hospital, as stipulated in the standards set up by the Regulations; that the said report was not submitted to NEMA and that the 1st Respondent has been operating within the limit of 55dBA stipulated for a commercial zone.

48. It was the deposition of the 1st Respondent's Director that the Petitioners' report failed to disclose a day time report when there was no music being played in the 1st Respondent's premises in order to determine the existing noise levels, which will be above 35dBA at every place; that the auditor's equipment wasn't calibrated and that after the survey that was conducted in the year 2015, the 1st Respondent undertook mitigation measures.

49. It is trite that pursuant to Gazette Notice number 177 of 2013, prevention of noise pollution is a devolved function of the County Governments and as such, it falls within the purview of the 4th Respondent. According to the 4th Respondent's Director of Environment and Solid Management Sector, a team of environmental officers from their office visited clubs within the suit premises and that the 4th Respondent issued notices to the establishment to lower the amplified sound to the required decibel levels, sound proof the club and carry out an Environmental Noise Level Survey to be submitted to Environment, Energy and Water Department.

50. The 4th Respondent deposed that they measured the noise level on three different days for two consecutive weeks; that the noise expert gave them a report showing that *Vineyard Wine Bar* managed by the 1st Respondent was playing loud music beyond the allowed limits and that the average decibel (dB) reading of the premises was slightly above the requirements of the law.

51. The 4th Respondent's officer finally deposed that *Vineyard Wine Bar* Management was striving to put measures and ensure that noise emitted from their premises is at minimum levels and that the 4th Respondent is keen of enforcing compliance of noise pollution regulations of 2009.

52. It is true, as submitted by the Petitioners, that anyone who increases his volume of speaker with the assistance of artificial devices so as to expose unwilling persons to hear noise raised to unpleasant or obnoxious levels violates the right of others to a peaceful, comfortable and pollution-free life guaranteed by **Articles 10, 42, and 69 of the Constitution**.

53. Indeed, under **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**, every person should have in mind, whenever they produce noise, to prevent it from being loud, unreasonable, unnecessary or unusual.

54. The challenge that confronts this court in the Petition before it is whether indeed the 1st Respondent has contravened the **EMCA (Noise and Excessive Vibration Pollution (Control)) Regulations, 2009**, as read together with **Articles 42 and 69 of the Constitution** considering the conflicting reports by the Petitioners and the 1st Respondent.

55. Although the 4th Respondent informed the court that the 1st Respondent had breached the Regulations, the 4th Respondent went further to depose that they measured the noise level on three different days for two consecutive weeks; that the noise expert gave them a report showing that *Vineyard Wine Bar* managed by the 1st Respondent was playing loud music beyond the allowed limits and that the average decibel (dB) reading of the premises was slightly above the requirements of the law.

56. The 4th Respondent's officer finally deponed that *Vineyard Wine Bar* Management is striving to put measures and ensure that noise emitted from their premises is at minimum levels and that the 4th Respondent is keen on enforcing compliance of noise pollution regulations of 2009.

57. In the report dated March, 2017 and prepared by Greenword Ecosystems, the 1st Respondent's agent/expert stated that *Vineyard Wine Bar* is located in a mixed residential and commercial area and that the facility did not have any significant contribution to the environmental background noise levels.

58. However, the said experts recommended that the establishment should install a sound proof roof with acoustic insulation above the open section of the restaurant and seal the wall gap; provide a sound limiter within the restaurant to automatically limit noise from the music system and the management to consider regular noise audits.

59. In the report that was prepared by Ecoserve Consultants Laboratory on behalf of the Petitioners dated 21st December, 2015, the experts stated that that *Vineyard Wine Bar and Restaurant* is located in an area classified as a commercial shopping zone whose noise level should not exceed 60 dB (A) during the day and 35 dB (A) at night and that *Vineyard Wine Bar* is surrounded by many other bars and restaurants that play loud music making the area noisy and uncomfortable to residential houses next to it.

60. Considering that this court is not certain as to whether *Vine Wine Bar* managed by the 1st Respondent is one and the same entity as *Déjà vu T/A Coco Glam & Topsy Corner* in the 2nd Respondent's premises, and in view of the conflicting experts' reports prepared by the parties herein, which reports were done in 2015 and 2017, an interim Judgment (Structural Interdict) will issue in this matter before the final Judgment. This will enable the court to make an informed decision based on the most current obtaining situation in the suit premises.

61. For those reasons, this court makes the following interim orders:

a) *Vine Wine Bar* managed by the 1st Respondent and or *Déjà vu T/A Coco Glam & Topsy Corner* situated in the 2nd Respondent's premises to install sound proof roof and walling with acoustic insulation above the central open section of the restaurant (s) within 30 days of this Judgment.

b) *Vine Wine Bar* managed by the 1st Respondent and or *Déjà vu T/A Coco Glam & Topsy Corner* situated in the 2nd Respondent's premises being within a mixed residential area to restrict the noise level in accordance with the first schedule of the Environmental Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations, 2009 which is 55 dB (A) during the day and 35dB (A) at night.

c) Licensed experts on behalf of the Petitioners and the Respondents to prepare reports on the noise level in *Vine Wine Bar* managed by the 1st Respondent and or *Déjà vu T/A Coco Glam & Topsy Corner* situated in the 2nd Respondent's premises on any Thursday, Friday and Saturday for two consecutive weeks and file the reports in this court within 60 days of the date of this Judgment.

d) This matter to be mentioned after the lapse of 60 days for final orders of the court.

Dated, signed and delivered virtually in Nairobi this 3rd March, 2022.

O. A. Angote

Judge

In the presence of:

Mr. Addli for the Plaintiff

Ms Akoth h/b K'pere for 2nd Defendant

Mr. Marwa for 1st Defendant

Court Assistant - Okumu