



Republic v Malawi - Director of Environment County Government of Nairobi & another; Rosedale Gardens Limited (Ex parte Applicant) (Judicial Review Cause E258 of 2025) [2025] KEHC 12582 (KLR) (Judicial Review) (16 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW CAUSE E258 OF 2025
JM CHIGITI, J
SEPTEMBER 16, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

JOHN PAUL MALAWI - THE DIRECTOR OF ENVIRONMENT COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT

COUNTY GOVERNMENT OF NAIROBI 2ND RESPONDENT

AND

ROSEDALE GARDENS LIMITED EX PARTE APPLICANT

RULING

1. The application that comes up for determination is the one dated 22.8.25.
2. The Applicant seeks the following orders:
 1. Spent.
 2. That leave to institute Judicial Review Proceedings granted by this court on 20th August 2025 do operate as a stay of the decision by the Respondents to deny licence to emit noise in excess of permissible levels use its premises on plot 1/142 along Denis Pritt, Kilimani, Dagoretti North in Nairobi county as long as the prerequisite statutory compliance steps are met leading to the issuance of a noise permit or in the alternative;



3. That the court directs that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days as per law provided order 53rule (1)(4).
4. That costs of this application be provided for.

The Applicant's case:

3. The Exparte Applicant argues that it was incorporated in the year 2014 and that it has since inception operated a private boutique venue for various events on PLOT 1/142 along Denis Pritt Road, Kilimani Nairobi County.
4. It is its case that The Applicant has never been denied the permits and it was duly licenced by the Respondent this year, 2025 vide licence no UBP174966 like all years before renewable annually upon compliance with the *Environmental management and Co-ordination Act*.
5. The Applicant argues that the customers seeking to conduct activities at the venue usually apply for a gathering permit from local police and the licence to emit noise in excess of permissible limits from the county and the said permits have been issued to them without any hitches.
6. Prior to any applications a noise survey report is required by the county as a condition for issuance of a gathering permit and permission to emit noise louder than the permissible level.
7. It argues that the noise survey report dated 28th June 2025 was prepared and submitted to the 1st Respondent on 2nd July 2025.
8. The Applicant is also supposed to seek consent of the resident association and immediate neighbors which the company has always sought.
9. According to Applicant, the final requirement is the issuance of the noise permit is a gathering permit. It had one from Kileleshwa Police station.
10. It argues that on or about 9pm on 5th July 2025 the 2nd Respondent through its agents interrupted the event under the auspices of noise pollution without any legal justification or valid grounds despite the fact that the Applicant had successfully applied for a gathering permit and a license to emit noise above permissible levels as demonstrated by the permit dated 4th July 2025.
11. The said agents proceeded to illegally film the private activities of the Applicants which activities had been licensed by the Respondents herein.
12. It is its case that the officials aforementioned were not uniformed and they did not display any gazette identifying individuals; certificate of appointment or inspection.
13. It argues that the enabling law gives powers to issue, suspend or revoke the license aforementioned which was not done.
14. No notices were served upon the Applicant and no charges even after service of the demand letter have been preferred despite the law providing such actions.
15. The enabling law empowers members of the county executive committee of the 2nd Respondent to issue a certificate of appointment and a certificate of inspection which has never been done.
16. It is its case that the enabling law empowers legally authorized officers to;
 - a. Examine anything referred to relevant to the statute.



- b. Require production for inspection any written information relevant to the administration and enforcement of the enabling law.
 - c. Conduct tests.
17. None of the aforementioned steps were undertaken by the Respondents and or their agents/licenced officers leading to a demand dated 15th July 2025 duly received by the various entities on 16th July 2025 and 17th July 2025.
 18. It is its case that the 2nd Respondent formally acknowledged receipt of the demand letter on 23rd July 2025 and indicated that the same would be acted on via a letter dated 18th July 2025. Attached and marked EWN-9 is a copy of an acknowledgement email and letter sent to our Advocates on record.
 19. It argues that all applications for gathering permits and licence to emit noise have subsequently been rejected without notice or reasons thereof either directly by the Applicant company or its customers wishing to partake any of the aforementioned activities since the 5th day of July 2025.
 20. It argues that no reasons have been given for denial of the permit save for express and veiled requests for bribes in return for approvals a criminal illegal practice that our company and its officials have never engaged in since inception.
 21. It argues that the enabling law does not provide for internal appellate procedures/dispute resolution hence the Applicant has no other redress other than this Honourable court.
 22. It Argues that the actions of the Respondent have a direct adverse effect on the business of the Applicant as we have been getting several demands from some clients, who had booked in advance asking for their deposit refund and since the illegal actions of 5th July 2025.

The Applicants submissions:

23. On 5th July 2025 the 1st Respondent's officers interfering with the private business activities of the Applicant.
24. Subsequently, no more permits were issued by the 1st Respondent and no reasons were ever given for this denial Prompting the service of a demand letter highlighting these intrusions and secondly the denial of permits.
25. The current application has been filed pursuant to order 53 rule 4 for the court to determine whether leave so granted can operate as a stay of the decision of the Respondent to withhold the licence to emit noise in excess of permissible level and /or deny Applicants the licence to emit noise in excess of permissible level.
26. The process of application of a noise permit commences with an application to the director environment and natural resources, consent letter from the areas resident's association, gathering permit from the local police station and payment of the requisite fee.
27. It submits that the doctrine of alternative dispute resolution and that of exhaustion of in the context of litigation was considered and applied in *Githeng'o v Nairobi City County Government* (Petition E047 of 2021) [2022] KEHC 13944 (KLR) (Constitutional and Human Rights) (13 October 2022) (Judgment) where the court considered two separate binding court of appeal decisions at pages 6 and 7.



28. In *Republic v Anti-Counterfeit Agency & 2 others Ex-parte FRM (EA) Packers Limited & another* [2017] eKLR Lady Justice Aburili observed;
- “ All persons and Citizens of this country, at that, have a legitimate expectation that the rule of law which is a national value and principle of governance espoused in Article 10 of the Constitution shall be promoted at all times in the execution of public duty or in the taking of an administrative action.”
29. In that case, the Applicants having been lawfully licensed to manufacture the products, they had a legitimate expectation that those licenses issued to them would enable them manufacture products for the full year as long as they fulfilled the conditions which led to the grant of the licences.
30. The Applicant submits that it has demonstrated that it has always complied with the Respondents’ requirements for issuance of a permit and that the reasons for denial can only be interpreted to be biased, arbitrary and made in bad faith.
31. There is no complaint by adjacent residents and even the Respondents themselves since service of the letter dated 15th July 2025.

Analysis and determination:

The issue for determination is whether or not the application has merit.

32. In the case of *Centre for Rights Education & Awareness (CREAW) & 7 Others v Attorney General* [2011] eKLR, the Court outlined the applicable test for the grant of stay orders to be:
- a. Existence of a prima facie case with an arguable claim;
 - b. Demonstration of a real danger of prejudice and irreparable harm; and
 - c. Consideration of public interest.
33. In *Taib A. Taib v The Minister for Local Government & Others* Mombasa HCMISCA. No. 158 of 2006 was that:
- “ ... The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made and it is not limited to judicial or quasi-judicial proceedings as it encompasses the administrative decision making process being undertaken by a public body such as a local authority or minister and the implementation of the decision of such a body if it has been taken...”
34. Upon analyzing the evidence that has been tendered by the Applicant, this court is of the view that the Applicant has an arguable case.
35. The court is further satisfied that the Applicant is likely to suffer prejudice as a result of the Respondents conduct or omission.
36. The Applicant has demonstrated that it has contractual relationships or engagements with third parties, which are likely to be affected in the event the court does not intervene.
37. The court is further satisfied that indeed the Applicant has in the past applied for and been granted licenses to carry on its business in the suit premises under the same environment.



- 38. The Respondents does not deny that it received a demand letter from the Applicant. The refusal to respond to the Applicant’s letter offends the rules of natural Justice.
- 39. The least that the Respondents would have done upon receipt of the Applicant’s letter was to respond to the letter justifying or explain the reasons behind the impugned decision and action that goes to the heart of the suit.
- 40. Had the Respondents done that, then the court would have been able to weigh and assess and see whether or not the Respondents were acting within the law. This was not done.
- 41. The Respondents had an opportunity to tender evidence to counter the Applicant’s arguments. No response was filed.
- 42. The court finds that the Applicant has made out a case for the grant of the order of stay and I so hold.

Disposition:

- 43. The Applicant has demonstrated that it merits that the leave granted on 20th August 2025 should operate as a stay of the Respondents’ arbitrary decision.

Order:

- 1. Leave to institute Judicial Review Proceedings granted by this court on 20th August 2025 shall operate as a stay of the decision by the Respondents to deny the Applicant the licence to emit noise in excess of permissible levels and to use its premises on plot 1/142 along Denis Pritt, Kilimani, Dagoretti North in Nairobi county pending the hearing and determination of the suit.
- 2. The Applicant shall maintain the statutory noise levels pending the hearing and determination of the suit.
- 3. Costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF SEPTEMBER, 2025.

.....

J. CHIGITI (SC)

JUDGE

