



**Nzomo v National Environment Management Authority & 2 others (Environment & Land Petition 1 of 2024) [2025] KEELC 138 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 138 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 1 OF 2024**

**AA OMOLLO, J  
JANUARY 23, 2025**

**BETWEEN**

**ANN NZOMO ..... PETITIONER**

**AND**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 1<sup>ST</sup>  
RESPONDENT**

**MANAGEMENT, NEW KITISURU PLACE ..... 2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner filed the Petition dated 20<sup>th</sup> March 2024 against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents seeking for the following prayers;
  - a. A Declaration that the Petitioner’s tenants’ rights to peacefully enjoy their property and live in a clean and healthy environment has been violated by the actions and inactions of the Respondents as outlined in the Petition.
  - b. A Declaration that the 1<sup>st</sup> Respondent’s continued operations within Kitisuru Estate is a violation of the Petitioner’s Tenants’ right to use and enjoy their property under Article 40 of the Constitution and a violation of their right to clean and healthy environment as provided for in Article 42 of the Constitution.
  - c. A declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have abdicated their Constitutional and statutory duties to ensure the implementation of all policies relating to the environment to control noise pollution and public nuisance respectively, within Kitisuru Estate in Nairobi County.



- d. A permanent injunction restraining the 1<sup>st</sup> Respondent from emitting noise beyond its precincts which interferes with Kitisuru residents' quiet use and enjoyment of their properties and to live in a clean and healthy environment.
  - e. An order for the Officer Commanding Station (OCS) Spring Valley Police Station to enforce compliance of the orders of this Honourable Court.
  - f. An order for compensation for violation of fundamental rights and freedoms.
  - g. Costs of the Petition, and
  - h. Any other relief this Honourable Court may deem fit.
2. The Petition was supported by the affidavit of Ann Nzomo the petitioner, sworn on 20<sup>th</sup> March 2024. She deposed that she is a resident and landlady on unit No.104 in New Kitisuru Estate. She gave a synopsis of her case stating that her tenants living within the said Estate which is designated as low density residential dwelling estate enjoyed a serene, quiet and peaceful surrounding over several years until the 1<sup>st</sup> Respondent set up the entertainment place (club) within the area.
  3. That the 1<sup>st</sup> Respondent has been playing excessively loud music way beyond the allowed limits which reverberates throughout the night to the early morning hours; in deafening levels and in total disregard of the resident's pleas. The Petitioner added that the loud music played by the 1<sup>st</sup> Respondent has been denying her tenants, who have very young infants of less than one year, the opportunity to enjoy a peaceful, meaningful sleep/rest thereby compromising their psychological well-being and endangering their health, factors occasioned by lack of adequate rest and sleep.
  4. The Petitioner contended that the 1<sup>st</sup> Respondent's actions are in violation of the tenant's right to use and enjoy their property under Article 40 of the Constitution and also a violation of their right to live in a clean and healthy environment as provided for in Article 42 of the Constitution. She stated that as a direct result of the 1<sup>st</sup> Respondent's actions, her tenants gave oral notices to vacate her residential houses, an action that will occasion her financial loss and irreparable damages.
  5. The Petitioner stated that despite receiving demand notices, the 1<sup>st</sup> Respondent has unabatedly and arrogantly continued to create public nuisance through noise pollution. That Article 3 provides that every person has an obligation to respect, uphold and defend the Constitution. Further, Article 10 states that national values and principles of governance bind all State organs, State officers, public officers and all persons whenever any of them enacts, applies or interprets any law or makes or implements public policy decisions.
  6. Further, that Article 28 states that every person has inherent dignity and the right to have that dignity respected and protected which include not to be subjected to torture in any manner, whether physical or psychological in Article 29. And Article 35 provides that every citizen has the right of access to information held by the State and to information held by another person and required for the exercise or protection of any right or fundamental freedom.
  7. That Article 40 on protection of the right to property provides that every person has the right, either individually or in association with others to inquire and own property and no law shall be enacted by the Parliament to arbitral deprive a person of property of any description or of any interest in, or right over any property of any description.
  8. Also, that Article 42 provides that every person has the right to a clean and healthy environment and Article 69 obligates the state in respect of the environment, to establish systems of environmental impact assessment, environmental audit and monitoring of the environment, to eliminate processes



and activities that are likely to endanger the environment and utilize the environment and natural resources for the benefit of the people of Kenya.

9. The Petitioner stated that under Environmental Management & Coordination Act (EMCA) Section 101 and 102 provides that the standards and enforcement review committee in consultation with the relevant lead agencies recommend to the Authority minimum standards for emissions of unnecessary noise and vibration pollution into the environment from any source. Further, noise in excess of established standards is prohibited and any person who emits noise in excess commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings.
10. The 1<sup>st</sup> Respondent only filed notice of appointment of advocates but nothing more. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file any appearance. Hence, the Petition proceeded as undefended.

### **Submissions.**

11. The Petitioner filed submissions dated 28<sup>th</sup> October 2024 in which they outlined the background of the petition and framed two issues for determination; whether the Petitioner's tenants' right to peacefully enjoy their property and to live in a clean and healthy environment has been violated by the actions and inactions of the Respondents and whether the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have abdicated their constitutional and statutory mandate leading to a violation of the Petitioner tenants' rights.
12. The Petitioner submitted based on Article 22(1) of the Constitution, her objective is to safeguard the welfare of residents of New Kitisuru area, including her tenants thus the 1<sup>st</sup> Respondent's actions of allowing operation of businesses like night clubs that create unreasonable amount of noise in the area designated as a low density residential is not only unjust but in contravention of the residents' right to a clean and healthy environment.
13. She posits that article 26(1) of the Constitution guarantees every person a right to life which right includes a right to a clean and healthy environment as also provided under Article 42(1) and in support cited Mwita J in *Mumara Estate Residents vs Nairbi City County & 2 Others* [2018]Eklr and the case of *Pastor James Jessee Gitahi & 202 Others vs Attorney General*, Pet No 683 of 2009 where D S Majanja J observed that prevention of noise and vibration pollution is now recognized as a component of a clean and healthy environment.

“.....That in determining whether the noise is loud several factors are considered including the time of day, the proximity to a residential neighborhood, whether the noise is recurrent, intermittent or constant, the level or intensity of the noise, whether the noise has been enhanced by any electronic or mechanized means or whether the noise can be controlled without effort or expenses to the person making the noise.”

14. It is her submission that Article 21 imposes a fundamental duty on the state and every state organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms as in the Bill of Rights and such the 2<sup>nd</sup> Respondent which is a creation of Section 7 of the Environmental Management and Coordination Act is the lead agency which has a wide mandate to exercise general supervision and coordination of all matters Environment.
15. The Petitioner submitted that the transgressions of the 3<sup>rd</sup> Respondent are even worse as it had issued licenses including liquor license to the club giving them authority to operate in a residential area and in total contravention of clear provisions of the Nairobi City County Alcoholic Drinks Control and Licensing Act, 2014. That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents ought to be held liable for their actions and the



1<sup>st</sup> Respondent be warned against allowing any business to operate within New Kitisuru Estate which is a low-density residential area.

**Determination:**

16. I have read and analyzed the Petition filed and the submissions rendered together with case and Statutory law referred to by the Petitioner. I find that issues before this court for determination are in two-fold; Whether the Petitioner's tenants' right to clean and healthy environment has been violated by the Respondents and whether the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have abdicated their constitutional and statutory mandate leading to a violation of the Petitioners' rights.
17. The Petitioners pleaded that the 1<sup>st</sup> Respondent's actions of allowing operation of an entertainment place(club) within the Estate area is a violation of her tenant's right to use and enjoy their property under Article 40 of the Constitution and also a violation of their right to live in a clean and healthy environment as provided for in Article 42 of the Constitution.
18. She added that with regard to this specific scenario, the 2<sup>nd</sup> Respondent failed on their mandate to exercise general supervision and coordination of all matters Environment and that the 3<sup>rd</sup> Respondent issued licenses including liquor license to the club giving them authority to operate in a residential area in total contravention of provisions of the Nairobi City County Alcoholic Drinks Control and Licensing Act,2014.
19. The Court of Appeal in the case of Civil Appeal No. 95 of 2016 in the case of Daniel Kibet Mutai & 9 others v Attorney General [2019] eKLR cited with the case of Peter O. Nyakundi & 68 others v Principal Secretary, State Department of Planning, Ministry of Devolution and Planning & another [2016] eKLR which stated,

“As stated earlier the Respondents did not file any Replying Affidavit to challenge and/or controvert the sworn averment by the Petitioners that they were victims of the post-election violence. Ground of Opposition which were filed are only deemed to address issues of law. They are general averments and cannot amount to a proper or valid denial of allegations made on oath.”
20. Also, in the case of Kennedy Otieno Odiyo & 12 Others v. Kenya Electricity Generating Company Limited [2010] eKLR the court held as follows: -

“The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition addresses only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the applicant in its supporting affidavit. Thus, what was deponed to was not countered nor rebutted by the respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant's supporting affidavit, means that the respondents have no claim against the applicant”.
21. Relying on the above cited authorities, a replying affidavit would best serve to deny issues raised in a Petition. Thus, in essence the averments made by the Petitioner are deemed as uncontroverted and unchallenged. However, having stated as such, the Petition should proceed to determination it on its merits.



22. The Petitioner pleaded that operation of the entertainment place(club) has violated her tenant’s right to a clean and healthy environment. It is however a development in the written submissions that the entertainment place has ceased operation.
23. The Petitioner sought for compensation for violation of fundamental rights and freedoms and a permanent injunction against the 1<sup>st</sup> Respondent restraining operation of businesses emitting noise beyond its precincts
24. It is my view that the Petitioner has merely stated that the excessive noise denied her tenants, who have very young infants of less than one year, the opportunity to enjoy a peaceful, meaningful sleep/rest thereby compromising their psychological well-being and endangering their health, factors occasioned by lack of adequate rest and sleep. She did not present any evidence that the noise levels exceeded the permissible levels neither did she present any evidence of tenancy agreements and these occupants raising any violations of their rights to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents or any government agency before the filing of this petition or during the pendency.
25. In the case of Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others [2014] eKLR stated as follows:

“Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru vs. Republic, (1974) KLR 154: the necessary of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”
26. Again, at the submissions stage, the Petitioner stated that the entertainment place (club) is no longer in operation but nonetheless emphasized the need for a permanent injunction restraining the 1<sup>st</sup> Respondent from allowing operation of businesses that emit noise beyond their precincts. It is by now well settled by precedent that parties are bound by their pleadings which are the bedrock upon which all the proceedings derive. With that said, the Petitioner sought for a permanent injunction restraining the 1<sup>st</sup> Respondent (which was then, the entertainment place) from emitting noise beyond its precincts which interferes with Kitisuru residents’ quiet use and enjoyment of their properties and to live in a clean and healthy environment.
27. The nature of an order of permanent injunction which is a perpetual injunction is that it is granted upon the hearing of the suit. As held in the case of Kenya Power & Lighting Co. Limited Vs Sheriff Molana Habib [2018] eKLR, it fully determines the rights of the parties before the court. The 1<sup>st</sup> Respondent having vacated the impugned premises and or ceased undertaking the business, it is my considered opinion and I so hold that this court ought not issue a perpetual injunction against parties not before it
28. Further, the Petitioner outlined the mandate of the 2<sup>nd</sup> Respondent as provided for under Section 7 of the Environmental Management and Coordination Act in exercising general supervision and coordination of all matters Environment. However, the Petitioner did not show with particularity the inaction of the 2<sup>nd</sup> Respondent in carrying out the said mandate. She also stated that the 3<sup>rd</sup> Respondent issued licenses to the entertainment place (club) including the liquor license giving them authority to



operate in a residential area and in contravention of provisions of the Nairobi City County Alcoholic Drinks Control and Licensing Act, 2014.

29. It is not pleaded anywhere in the body of the Petition or the supporting affidavit an order challenging the legality of the said license issued to the 1<sup>st</sup> Respondent. She did not lodge any complaints with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to act on the alleged violations because what was produced was a demand letter written to the 1<sup>st</sup> Respondent dated 14<sup>th</sup> February, 2024 and copied to the 2<sup>nd</sup> Respondent only. The letter did not require of the 2<sup>nd</sup> Respondent to take any action. Thus, the court cannot make declaration as sought that they (2<sup>nd</sup> & 3<sup>rd</sup> Respondents) abdicated their mandate. Lastly, the prayer for the OCS Spring Valley to ensure compliance would issue if there were any positive orders issuing.
30. In light of the analysis of the pleadings filed and the submissions rendered, I hold that the Petitioner did not precisely plead and prove the alleged violations of her constitutional rights and those of her tenants to required standards. There is no merit shown to warrant the grant of the reliefs sought. The Petition is dismissed with no order on costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI, THIS 23<sup>RD</sup> DAY OF JANUARY, 2025.**

**A. OMOLLO**

**JUDGE**

