



**Maasai Lodge Road Residents Association v Kuria & 4 others (Environment and Planning Civil Case E001 of 2024) [2025] KEELC 4659 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND PLANNING CIVIL CASE E001 OF 2024  
LC KOMINGOI, J  
JUNE 19, 2025**

**BETWEEN**

**MAASAI LODGE ROAD RESIDENTS ASSOCIATION ..... PLAINTIFF**

**AND**

**JOTHAM GITONGA KURIA ..... 1<sup>ST</sup> RESPONDENT**

**CYRUS GITONGA ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KAJIADO ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 4<sup>TH</sup>  
RESPONDENT**

**NATIONAL CONSTRUCTION AUTHORITY ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 14<sup>th</sup> April 2024 brought under Section 1A, 1B, and 3A of the [Civil Procedure Act](#); and Order 40 and Order 51 Rule 1 of the Civil Procedure Rules. It seeks:
  - i. Spent.
  - ii. A temporary injunction be issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from proceeding with construction of a hotel on Land Reference No. Kajiado/Olekai/ 1XX5, 1XX6 and 1XX7 pending the hearing and determination of this suit.
  - iii. This Honourable Court be pleased to declare status quo until the hearing and determination of this suit on merit.
  - iv. The Officer in Charge of Station, Rongai Police Station, ensure compliance with the Stop Order issued by Kajiado County Government.



- v. The costs of this application be in the cause.
2. The grounds are on the face of the Application and are set out in paragraphs 1 to 6. The same is supported by the affidavit of the Sirere Roimen, the Chairman of the Plaintiff/Applicant.
  3. He states that Maasai lodge area is a controlled development area designated for residential development only and not commercial purposes. It is his case that, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are discreetly constructing a four storey hotel contrary to the approvals issued by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents and without approval for change of user. The Applicant claims that according to the display board, the construction should be on Kajiado/Olekai/1XX6 but in reality, the construction is being undertaken on parcels Kajiado/Olekai/1XX5, 1XX6 and 1XX7. That upon this discovery, the Applicant made a report to the 3<sup>rd</sup> Respondent and a stop order was issued and served upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It is his case that despite the stop order the construction is ongoing.
  4. The Applicant's case is that the construction has caused noise pollution and they stand to suffer loss of their easement rights and clean air. It is their prayer that, the stop orders should be enforced pending hearing and determination of this suit and the 5<sup>th</sup> Respondent ought to be summoned to confirm if it approved the construction of the hotel.
  5. The 1<sup>st</sup> Respondent, Jotham Gitonga Kuria in his Replying Affidavit dated 4<sup>th</sup> July 2024, denied that they are constructing a four (4) storey hotel. It is his case that they sought approvals from the 3<sup>rd</sup> and 5<sup>th</sup> Respondents for construction of a residential property on Kajiado/Olekai/1XX5. He further avers that the Applicant did not adduce any evidence to show that the residential construction was contrary to the area zoning regulations. He added that there was no need to seek for change of user because the construction was for residential and not for commercial purposes as claimed by the Applicant.  
  
He also denied that there will be noise pollution as they had approvals form the 4<sup>th</sup> Respondent. He also contested the stop order on grounds that there are no area zoning regulations and hotels as well as residencies continue to be constructed. He prays that, the application should be dismissed with costs.
  6. The 4<sup>th</sup> Respondent filed a Preliminary Objection dated 1<sup>st</sup> July 2024. The same is not coming up for determination, hence I will not address it at this point.
  7. The 5<sup>th</sup> Respondent in the Replying Affidavit sworn by Stephen Mwilu, the Compliance Manager, contested the application on grounds that that it acted lawfully and within its statutory mandate under Sections 23 and 23A of the National Construction Authority Act (herein after referred to as NCAA) and the National Construction Authority Regulations, 2014 in relation to the construction project the subject of the current proceedings.
  8. In line with Section 23(2) of NCAA, the 5<sup>th</sup> Respondent's compliance officers undertook a due diligence inspection on 24<sup>th</sup> October 2023 of the suit property, a proposed construction of a four (4) storey hotel on land reference Kajiado/ Olekai/1XX5, and suspended it for non-compliance due to the following deficiencies:Lack of National Construction Authority (NCA) Compliance Certificate;Lack of NCA registered contractor on site with valid certificate;Lack of accredited skilled workers and site supervisors;Lack of personal protective Equipment; andLack of safety signs on site.
  9. On 3<sup>rd</sup> July 2024, the 5<sup>th</sup> Respondent's team of officers carried out a follow up investigation and prepared a preliminary investigation report on the proposed development, showed:The proposed development was registered with the Authority as a maisonette on 17<sup>th</sup> January 2024 through the Online Project Registration System (OPRS) and a Certificate of Compliance PROJ. REG. NO. 466183157 valid from 17<sup>th</sup> January 2024 to 17<sup>th</sup> January 2026 was issued, signifying compliance with



the Authority's laws and regulations; During the due diligence undertaken on 16<sup>th</sup> January 2024, the construction was at 1<sup>st</sup> floor and the works were ongoing with evidence of site inspections by consultants; On the second follow up inspection on 13<sup>th</sup> March 2024, the works were at the second-floor stage with a suspended slab; There were no ongoing works on the site; An invitation letter by the Applicant addressed to the 1<sup>st</sup> Respondent for a meeting on Saturday, 6<sup>th</sup> April 2024 with regard to the proposed residential development on Kajjado/ Olekai/1XX5 and 1XX6 was copied to the National Construction Authority.

10. He went on to state that the approval process of any construction project is undertaken by the 3<sup>rd</sup> Respondent - the County Government, with the 5<sup>th</sup> Respondent registering the construction works once the County Government has approved the project. The 5<sup>th</sup> Respondent therefore plays a distinct but complementary role with other agencies and regulators, including the 3<sup>rd</sup> and 4<sup>th</sup> Respondents by ensuring compliance of a construction site with the required standards for construction.
11. It is the 5<sup>th</sup> Respondent's case that it fulfilled its mandate under the [\*National Construction Authority Act\*](#) No. 41 of 2011 and the National Construction Authority Regulations 2014 and the application does not have a reasonable cause of action against it.
12. The application was canvassed by way of written submissions.

#### **The Applicant's submissions.**

13. The issue for determination highlighted by the Applicant was whether the Applicant had met the threshold for the grant of an order of Injunction
14. It was submitted that the Applicant had produced a Stop Order dated 4<sup>th</sup> April 2024 issued by the County Government of Kajjado- 3<sup>rd</sup> Respondent, directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to halt construction on the subject property due to contravention of the area zoning regulation. However, the Respondents continued construction on the property, in blatant disregard of the Stop Order, on grounds that they had obtained requisite approvals. However, a reading of the Approval for Development produced by the 1<sup>st</sup> Respondent showed that the approval was issued for development of a "residential development (maisonette)." Counsel submitted that as per the Oxford Advanced Learner's Dictionary and Merriam-Webster Dictionary a maisonette was defined as: "a flat, usually with two floors, within a larger building, and typically having its own separate entrance" and "an apartment often on two floors" respectively.
15. As such, the Applicant had met the threshold set in *Giella vs Cassman Brown* [1973] EA 358, *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR and *Mrao Ltd. v. First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 for grant of interlocutory injunction.
16. Counsel submitted that the Applicant had evidenced the Respondents' violations and infringements of their Constitutional rights such as the right to a clean and healthy environment as provided under Article 42 of [\*the Constitution\*](#), due to the noise pollution caused by the Respondents. If these actions were not stopped, then the Applicant stood to suffer irreparable harm that could not be compensated by an award of damages. Citing the late Majanja J. in *Pastor James Jessee Gitahi & 202 Others vs Attorney General*, Pet No 683 of 2009 where he held: "...Both excessive noise and vibration can cause injury to the body hence the need to regulate the levels of noise through the regulations...."
17. On a balance of probability, it was submitted that if the injunction is not granted and the suit is decided in favour of the applicant, the inconvenience caused to the Applicant would be greater than that which would be caused to the Respondents if an injunction is granted. Adding that the risk to the environment was a greater risk and the Applicant should therefore be granted the orders sought.



### **The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submissions.**

18. On whether the Applicant has met conditions for grant of an order of temporary injunction, counsel submitted that as per *Giella v. Cassman Brown & Co. Ltd* [1973] E.A. 358, *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR and *Mrao Ltd. v. First American Bank of Kenya Ltd* [2003] eKLR, the Applicant had not proved they had a prima facie case because the claim that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not have requisite approvals was false as per the approvals produced by the Respondents. Additionally, the claim that the Respondents were constructing a hotel was false because the approvals produced were for a maisonette and not a hotel. Pointing out that the area was surrounded by hotels and the claim that it was a zoned area could not stand.
19. On the ground of irreparable injury that would cause irreparable injury, it was submitted that this had not been established because the Respondents had been issued approvals by the 4<sup>th</sup> respondent therefore the allegation of noise was unsubstantiated.
20. On whether they had shown that the balance of convenience tilts in their favour, it was argued that they had not with reference to *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR and *Paul Gitonga Wanjau vs Gathuthis Tea Factory Company Ltd & 2 others* [2016] eKLR.
21. As such, the application should be dismissed with costs.
22. At the time of writing this Ruling, the other Respondents had not filed their submissions.

### **Analysis and determination.**

23. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. I find that the following issues arise for determination:
  - i. Whether the Notice of Motion dated 14<sup>th</sup> April 2024 for grant of interlocutory injunction is merited;
  - ii. Who should bear the costs of this application?
24. The conditions for granting an interim injunction are well-established in *Giella v. Cassman Brown & Co. Ltd* [1973] E.A. 358. This was reinforced by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn also Known As Hermannus Phillipus Steyn & Hedda Steyn* [2014] KECA 606 (KLR) where it was held:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially”.



25. The first ground for determination is whether the Applicant has established a prima facie case with the likelihood of success. I am guided by the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others*[2003] eKLR where the Court of Appeal explained that a prima facie case:
 

“...includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter...”
26. The Applicant claims that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are constructing a hotel contrary to the approvals given which are for construction of a maisonette. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have contested this claiming that they are indeed constructing a maisonette as per the approvals, hence the Applicant’s claim is false and unsubstantiated.
27. To buttress their respective positions, the Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents produced the same set of approvals, save for the Stop Order dated 4<sup>th</sup> April 2024.
28. The approval stamped 13<sup>th</sup> July 2022 from the 3<sup>rd</sup> Respondent addressed to the 1<sup>st</sup> Respondent shows that the approval issued on 13<sup>th</sup> July 2022 is for building of a residential development (maisonette) on parcel Kajiado/Olekasasi/1XX6.
29. The certificate of compliance from the 5<sup>th</sup> Respondent issued to the 1<sup>st</sup> Respondent dated 17<sup>th</sup> January 2024 is for development on LR No. Kajiado/olekasasi/1XX5. And the 4<sup>th</sup> respondent’s approval dated 27<sup>th</sup> June 2023 is for residential development on LR No. Kajiado/Olekasasi/1XX5.
30. While it is not in contention that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have approvals from the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents to undertake residential development, the question that arises from the approvals produced is, is the development on property LR No. Kajiado/Olekasasi/1XX5 or LR No. Kajiado/Olekasasi/1XX6 or both?
31. Secondly, the 5<sup>th</sup> Respondent through its compliance manager responded that their mandate was to oversee the construction industry and was empowered by Section 23A and 23(2) of the NCAAA to enter into any construction site and inspect to ascertain that the provisions of the law and regulations were being complied with. In this regard, an inspection was carried out on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ site on the 24<sup>th</sup> October 2023 for a proposed construction of a 4 storey hotel on LR No. LR No. Kajiado/Olekasasi/1XX5. The construction was suspended for non compliance as summarised on paragraph 8 above.
32. The 5<sup>th</sup> Respondent produced its report dated 3<sup>rd</sup> July 2024 which shows that on 24<sup>th</sup> October 2023, the project was suspended for noncompliance; on 16<sup>th</sup> January 2024 the construction was at first floor; and in the inspection on 13<sup>th</sup> March 2024 the works were at second floor with a suspended slab.
33. While it is not in contention that there are valid approvals for the construction of a residential property, the dispute is in the nature of the construction with claims from the Applicant and the 5<sup>th</sup> Respondent that the construction is for a four (4) storey building.
34. I therefore find that the Applicant has established a prima facie case based on the nature of the construction.
35. On whether the Applicant have established that they will suffer irreparable injury if the orders are not granted, the Applicant have made this claim on the basis of noise pollution and the right to a clean and healthy environment. While, the Court finds that this ground has not sufficiently been proved, Article



70 of *the Constitution* provides for enforcement of environmental rights, even where the Applicant has not demonstrated that any person has incurred loss and injury. It provides as follows;

“70 (1) If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.

(2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate-

(a) to prevent, stop or discontinue any act or omission that is harmful to the environment;

(b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or

(c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.

(3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury”.

36. From the interpretation of this clause; if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the harm does not need to have occurred yet; it can be a pre-emptive action to prevent future environmental damage.

37. This provision therefore, gives courts broad and flexible powers to address environmental harm through issuance of an injunction or prohibition order to stop ongoing or imminent environmental harm. This therefore removes the requirement of demonstrating loss or injury in matters of environment.

38. On the issue of the balance of convenience, from the foregoing, it cannot be gainsaid that it tilts on the person who stands a higher risk if the injunction is not granted. And in this case it, is the Applicant. Should the suit be determined and held in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, they can claim an award of damages or compensation against the Applicant.

39. The disposal orders therefore are:

i. That a temporary injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or anyone else acting on their instructions from proceeding with construction on LR No. Kajiado/Olekai/ 1XX5, 1XX6 and 1XX7 pending the hearing and determination of this suit.

ii. That Costs of this application do abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**L. KOMINGOI**

**JUDGE.**

IN THE PRESENCE OF:

N/A for Plaintiff/Applicant.



Ms.Muriungi for Mr. Mugambi for the 1<sup>st</sup>, 2<sup>nd</sup> Defendants/Respondents.

N/A for the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> Defendants/Respondents.

Court Assistant – Mutisya.

