



Registered Officials and Trustees of Jesus Celebration Centre v National Environment Management Authority & 2 others; Darajani Hotel Limited & 3 others (Interested Parties) (Environment and Land Petition E020 of 2024) [2025] KEELC 7673 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7673 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND PETITION E020 OF 2024**

YM ANGIMA, J

NOVEMBER 6, 2025

BETWEEN

THE REGISTERED OFFICIALS AND TRUSTEES OF JESUS CELEBRATION CENTRE PETITIONER

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

NATIONAL ENVIRONMENT TRIBUNAL 3RD RESPONDENT

AND

DARAJANI HOTEL LIMITED INTERESTED PARTY

BRIDGE HOTEL LIMITED INTERESTED PARTY

REGISTERED OFFICIAL AND TRUSTEES OF LIFE TRANSFORMING CENTRE INTERESTED PARTY

REGISTERED OFFICIALS AND TRUSTEES OF MOUNTAIN OF SALVATION CHURCH CENTRE INTERESTED PARTY

RULING

1. By a petition dated 10.09.2024 and amended on 18.02.2025 the petitioners sought, inter alia, a certification that the petition herein raises a substantial question of law on whether a right or fundamental freedom in the bill of rights has been denied, violated, infringed or threatened and whether the impugned noise control regulations are inconsistent with the Constitution of Kenya.



2. When the court delivered its ruling dated 10.07.2025 on the 1st respondent's preliminary objection dated 04.11.2024 it directed the parties to file and exchange written submissions on the question of certification. The record shows that the petitioners filed submissions dated 20.08.2025 whereas the 1st respondent filed submissions dated 25.09.2025. However, the rest of the respondents and the interested parties did not file any submissions.
3. The court has considered the material and submissions on record. The petitioners contended that they are constitutionally entitled to enjoy their freedom of worship and to express it openly without undue restrictions imposed by the 1st respondent in a bid to control excessive noise through the National Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations 2009 (the Regulations). It was the petitioners' contention that the issues raised in the petition raise substantial questions of law which would warrant the constitution of a bench of an uneven number of judges to hear and determine the petition.
4. The petitioners relied upon, inter alia, the cases of Harrison Kinyanjui vs Attorney General & Another [2012] eKLR; Seventh Day Adventist Church (East Africa) Ltd vs Minister for Education & 3 Others [2017] eKLR; and Save Lamu & 5 Others vs National Environment Management Authority & Another [2019] eKLR in support of their submissions.
5. The 1st respondent, on its part, disputed that there were any substantial questions of law involved in the petition which could warrant the constitution of a bench to hear and determine the petition. It was submitted that similar questions have arisen in the past and they have been sufficiently dealt with. The rest of the submissions mainly dealt with the merits of the petition hence outside the province of the instant ruling.
6. Article 165 (3) and (4) which the petitioners' application was grounded stipulate as follows;
 - “(3) Subject to clause (5), the High Court shall have—(a)unlimited original jurisdiction in criminal and civil matters;(b)jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;(c)jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;(d)jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—(i)the question whether any law is inconsistent with or in contravention of this Constitution;(ii)the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;(iii)any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and(iv)a question relating to conflict of laws under Article 191; and(e)any other jurisdiction, original or appellate, conferred on it by legislation.
 - (4) Any matter certified by the court as raising a substantial question of law under clause (3)(b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.”



7. In the case of *Nkunja vs Magistrates and Judges Vetting Board & Another* (Petition 154 of 2016 [2016] KEHC 7269 (KLR) (Constitutional and Human Rights) (20 May 2016) (Ruling) Hon. Isaac Lenaola J (as he then was) considered the issue of certification as follows;

“ 33. Hon. Chemutut and 3 Others vs the Attorney General and 3 Others, Petition No. 307 of 2014, the Court appreciated the competence of a single Judge to handle any and all matters that goes before him or her. The Court observed that:

“It must also be remembered that each High Court judge, has authority under Article 165 of *the constitution* to determine any matter that is within the jurisdiction of the High Court. There is a right of appeal to the Court of Appeal and by virtue of Article 163(4) of *the Constitution*, an appeal as of right to the Supreme Court on Constitutional matters, there must be something more to the substantial question than merely novelty or complexity of the issue before the court. It may present unique facts not plainly covered by the controlling precedents. It may also involve important questions concerning the scope and meaning of decisions of the higher courts of the application of well-settled principled to the facts of a case.”

8. The said Judge further considered the factors to be taken into account when the court is faced with such an application as hereunder;

“ 36. In addition to the above, Odunga J. in *Peter Gichira vs The Attorney General and Others*, High Court Petition No. 313 of 2015 stated as follows:“(9)I have considered the issues raised in this petition. In my view the decision whether or not to empanel a bench of more than one Judge ought to be made only where it is absolutely necessary and in strict compliance with the relevant Constitutional and statutory provisions. This country, despite great strides made in the enlargement of the bench in the recent past still does not enjoy the luxury of granting such orders at the whims of the parties. Judicial resources in terms of judicial officers in this country are still very scarce and although the time taken for hearing a petition by a single judge may not be any different from that taken by a bench empanelled pursuant to Article 165(4) of *the Constitution*, it must be appreciated that the empanelling such a bench invariably leads to delays in determining cases already in the queue hence worsening the problem of backlog crisis in this country.” (Emphasis added)”

9. It is evident that the petitioners were ordered by the National Environment Tribunal (NET) to sound proof their church and to ensure that the sound emanating from their church does not exceed the levels specified in the impugned Regulations. There is no doubt that the petitioners are entitled to enjoy, practice and profess their faith. The only question which arises is how that right is to be balanced with the rights and freedoms of other persons and the right to a clean and healthy environment. This court is not satisfied that there arises a substantial question of law or a novel question which cannot be competently decided by single judge. The court is also not persuaded that the constitutionality of the Regulations cannot be determined by a single judge.

10. As indicated before, any decision rendered by this court sitting either singly or as a bench is appealable to the Court of Appeal which would always sit as a bench of three or more judges as may be determined by the President of the Court of Appeal.



11. The upshot of the foregoing is that the court is not satisfied that the petitioners have demonstrated a case for referral of the instant petition to the Hon. The Chief Justice under Article 165 (4) of the Constitution for constitution of a bench. Accordingly, the court makes the following disposal orders;
- a. Prayer No. (g) of the motion dated 10.09.2024 and amended on 18.02.2025 is hereby declined.
 - b. The petition shall be mentioned on 18.02.2026 for directions on the hearing thereof.
 - c. The petitioners shall serve the interested parties who are absent and file an affidavit of service.
 - d. Costs in the cause

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 6TH DAY OF NOVEMBER, 2025.

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Y. M. ANGIMA

JUDGE

In the presence

Gillian – Court Assistant

Mr. Mkomba for the petitioners

Mr. Wekesa for the 1st respondent

Mr. Kemei for the AG for the 2nd and 3rd respondents

No appearance for the 1st – 4th interested parties

