



House of Charity Children Home v Coyote Haven Bridge Limited & 2 others; Embassy of the Arabic Republic of Egypt & another (Interested Parties) (Environment and Land Petition E006 of 2025) [2025] KEELC 8323 (KLR) (28 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8323 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND PETITION E006 OF 2025

CG MBOGO, J

NOVEMBER 28, 2025

IN THE MATTER OF ARTICLES 2,3,12,19,20, 21,22,26,27,28,42,53(2),70 AND 162(2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE ALLEGED VIOLATION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 42, 53(2) & 70 OF THE CONSTITUTION

AND

IN THE MATTER OF THE ENVIRONMENT AND MANAGEMENT COORDINATION (NOISE AND VIBRATION POLLUTION) (CONTROL) REGULATION 2009

AND

IN THE MATTER OF SECTION 8 OF THE CHILDREN ACT, 2022

BETWEEN

HOUSE OF CHARITY CHILDREN HOME PETITIONER

AND

COYOTE HAVEN BRIDGE LIMITED 1ST RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT. 2ND RESPONDENT

NATIONAL ENVIRONMENTALMANAGEMENT AUTHORITY 3RD RESPONDENT

AND

EMBASSY OF THE ARABIC REPUBLIC OF EGYPT INTERESTED PARTY

ELITE GARDENS MANAGEMENT COMPANY LIMITED INTERESTED PARTY



JUDGMENT

1. The petitioner filed the petition dated 22nd January, 2025 seeking the following prayers:-
 1. A declaration that the continued operation of the 1st respondent's business within the petitioner's area of residence violates the petitioner's right to a clean and healthy environment, as well as the best interests of the child, as contemplated by Articles 26(1), 42(1) and 53(2) of *the Constitution* of Kenya.
 2. A declaration that the issuance of licenses and permits to the 1st respondent by the 2nd respondent permitting them to operate their business in the manner complained of by the petitioner, is unlawful/illegal.
 3. A declaration that the issuance of licenses to the 1st respondent by the 2nd respondent allowing them to operate their business in the manner complained of by the petitioner, constitutes a violation of the petitioner's right to a clean and healthy environment and the best interests of the child.
 4. A declaration that the waste emanating from the 1st respondent's property constitutes a violation of the petitioner's right to life, a clean and healthy environment as guaranteed under Articles 26(1) and 42(1) of *the Constitution* of Kenya.
 5. A declaration that the 1st respondent's trees dangerously hanging over the petitioner's property and causing sparks on the three-phase powerline constitute an affront to right to life, a nuisance to the petitioner's property, interfering with the petitioner's right to quiet enjoyment, safe and peaceful occupation.
 6. A permanent injunction restraining and/or prohibiting the 1st respondent herein by either themselves, their servants, and/or employees and/or anybody whosoever from further operation of live music, streamed music and/or any other kind of noise that would destruct the quiet and peaceful possession of the petitioner.
 7. A permanent injunction restraining and/ or prohibiting the 1st respondent, their agents, servant, or any other person from discharging waste from their property onto the petitioner's property.
 8. A mandatory injunction against the 2nd and 3rd respondents compelling them to issue and enforce closure notices against the 1st respondent for being in contravention of the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulation 2009 L.N No. 61 of 2009.
 9. An order directing the 3rd respondent to issue an Environmental Restoration Order to the 1st respondent requiring them to take the necessary actions to prevent further damage to the petitioner's land and property, and to remove any waste deposited on the petitioner's land or building as described in the petition, within four (4) days from the date of Judgment.
 10. An order of Mandamus compelling the 1st respondent to remove the leaves deposited on the petitioner's roof, trim the branches overhanging onto the petitioner's property, and repair the damage caused by the trees to the roof and wall of the petitioner's house, restoring them to the condition they were prior to the damage within fourteen (14) days from the date of judgment.



11. That the area OCS Muthangari Police Station does ensure compliance with the above orders.
 12. Respondents jointly and/or severally pay general damages for violating the petitioner's rights.
 13. Costs of the petition be borne by the respondents jointly and/or severally.
 14. Any other or further relief that the court may be pleased to grant.
2. The facts of the petition are that the petitioner is a charity children's home run by Poverelle Sisters of Bergamo whose residence is adjacent to the 1st respondent and the 2nd interested party. Further, that the 1st respondent is a bar, lounge and a nightclub which carries the business of entertainment and sale of alcoholic beverages with peak hours on Thursday, Friday, Saturday and Sunday from 9 pm to 6 am. The petitioner stated that due to the 1st respondent's presence within the residential area, it has been adversely affected in diverse ways including being deprived of quiet and peaceful environment due to unreasonably loud music which severely affected the health and early developments of the infants within the household.
 3. The petitioner contended that besides the noise emanating from the sound equipment, revelers who frequent the establishment also contribute to the noise. That as a result the infants are unable to rest adequately at night especially during the peak hours. Further, that the 1st respondent constructed toilets along the shared boundary wall from which water seeps through, weakening the structures and further installed an improperly wired generator along the same wall. The petitioner contended that the combination of stagnant water and exposed wires create a significant safety hazard to infants who may be playing nearby.
 4. The petitioner stated that the 1st respondent has two large cypress trees that hang over its property, and a power line which runs through the trees. This, they stated, that they are apprehensive that during the wet season, the trees may fall causing damage and posing a serious risk to the infants and caregivers. The petitioner stated that they sought intervention from the 2nd and 3rd respondents who have failed and neglected to take action. Further, that their rights shall continue to be infringed upon and aggrieved by the presence of the 1st respondent and the inaction of the 2nd and 3rd respondents.
 5. From the facts stated above, the petitioner stated that their right to life as envisaged under Articles 26 of *the Constitution* are violated. The same applies to Articles 53 (2) and 42 (1) of *the Constitution*.
 6. The petition was supported by the affidavit of Sr. Maria Zanoli which was sworn on even date. The petitioner deposed that it caters to the needs of abandoned children who are 25 in number all of whom are frequently disturbed by the loud noise from the 1st respondent during the wee hours of the night. The petitioner further deposed that they raised a complaint with the 1st respondent regarding the noise in 2021, and subsequently further complaints were raised with the chief by the petitioner and the interested parties vide the letters dated 5th November, 2021 21st December, 2021, 24th December, 2021 and 27th September, 2022. Further, that the 1st respondent stated that it would make arrangements for sound proof installation and issue notices in advance of events vide its letter dated 28th October, 2022.
 7. The petitioner deposed that they sent whatsapp messages and sought the 3rd respondent's intervention which was disregarded. Besides the noise pollution, the toilets constructed within the boundary walls are a direct violation to a clean and healthy environment. Despite a request made on 2nd May, 2024, no tangible action has been taken to address the same. Further, that despite the steps taken by the petitioner and the interested parties, the actions of the 1st respondent consistently undermine the best interests of the children, violating their fundamental rights and further jeopardizing the environment which the infants are supposed to thrive in.



8. David Onga're, the director of compliance of the 3rd respondent filed his replying affidavit sworn on 24th February, 2025. The 3rd respondent deposed that the site inspection of the 1st respondent was conducted on 7th February, 2025 where it was discovered that there was no evidence of an Environmental Impact Assessment License, Environmental Audit, Effluent Discharge License and Air Emission License. Further, that there was sound amplifying equipment which has the potential to emit excessive noise considering that the bar is in an open area.
9. The 3rd respondent deposed that a house and toilets have been constructed next to the common wall, and there is potential of storm water seepage to the petitioner's premises. Further, that there are two over mature cypress trees with KPLC wires crossing through, and a standby generator that causes vibration and emit smoke to the neighbouring compound. Following the said observations, the 1st respondent was issued with an Environment Restoration Orders, and in the absence of an Environmental Impact Assessment, it is impaired from assessing the environmental impacts of the 1st respondent.
10. It was further deposed that as at the time of swearing this affidavit, the 1st respondent had not complied with its restoration order. However, it has committed to comply with the same. Further, that no incident was reported by the petitioner, and instead the same was reported to the 2nd respondent. The 3rd respondent denies that it failed and neglected to take any action in respect of the petitioner's claim, and prayer 8 of the petition can only be issued as against the 2nd respondent who is mandated by [the Constitution](#) to control noise.
11. The 2nd respondent filed its replying affidavit sworn on 18th March, 2025 by Johnson Abwori Akong'o, the Director Trade Licensing. The 2nd respondent deposed that the 1st respondent applied for a unified business permit under Permit Number UBP 087027 wherein it was to operate a small lodging house, up to five rooms and a restaurant or a bar, and that the said establishment is situated outside the zones designated for nightclubs operations. It was deposed that prior to this petition, no complaints were received regarding the operation of the 1st respondent, and that upon receipt of this petition, an environmental assessment was conducted leading to the issuance of a statutory notice.
12. The 2nd respondent deposed that following investigation, it was discovered that the 1st respondent produces excessive noise and vibrations posing a significant health and safety hazard to residents. Further, that the 1st respondent failed to provide notification in case of alteration in the nature of trade, and the liquor license issued on 28th September, 2023 expired on 27th September, 2024 which license did not enable or permit a grant to operate a night club.
13. It was further deposed that the license was not renewed upon expiry, and as such, the 1st respondent was selling alcohol illegally. The 2nd respondent deposed that the 1st respondent contravened environmental and public health laws by failing to implement noise reduction measures, resulting in noise pollution, and that as at the date of filing this response, the 2nd respondent had suspended the 1st respondent's unified business permit. Further, that the 1st respondent bears full responsibility for mitigating the adverse environmental effects of their activities including noise pollution at its own costs.
14. The 3rd respondent filed a further affidavit sworn on 22nd July, 2025. The 3rd respondent deposed that after a review of the 1st respondent's report, further information regarding a signed tenancy agreement and signed minutes for public consultation meeting was requested, and to date these issues or information have not been provided. That following an inspection that was conducted on 8th July, 2025, it was found that the over mature cypress trees were cut down, the 1st respondent had undertaken an EIA but a license had not been issued, and that there was improvement in noise control except on Sundays.



15. The petitioner also filed a supplementary affidavit sworn on 8th July, 2025. The petitioner deposed that despite the orders issued by the court, the 1st respondent continues to breach its fundamental rights and freedoms, and this conduct expose the children to noise, violence, harm, chaos and air pollution.
16. The petition was canvassed through written submissions. The petitioner filed its written submissions dated 21st February, 2025. The 2nd respondent filed its written submissions dated 9th July, 2025. The 3rd respondent filed its written submissions dated 28th July, 2025. Upon a careful perusal of the pleadings, I note that the 1st respondent did not file a response to the petition, and neither did it file written submissions. What is on record is a response to the notice of motion. Be that as it may, I have considered the petition, the responses and the written submissions filed. I am of the view that the issue for determination is whether the petitioner's right to a clean and health environment have been violated and what are the available remedies.
17. Article 42 (1) of the Constitution provides that:-
 - a. To have the environment protected for the benefit of the present and future generations through legislative and other measures particularly contemplated in Article 69 and
 - (b) to have obligations relating to the environment fulfilled under Article 70".
18. Section 3 (1) of the Environmental Management and Co-ordination Act, Cap 387 further provides:-

“Every person in Kenya is entitled to a clean and healthy environment in accordance with the Constitution and relevant laws and has the duty to safeguard and enhance the environment.”
19. From the above provisions of the law, and the Constitution, it is the right of every person in Kenya to have a clean and healthy environment. The petitioner, a children's home catering to infants and minors is aggrieved by actions of the 1st respondent whose property is adjacent to its property. The petitioner stated that the 1st respondent has violated their right to a clean and healthy environment and that despite making several complaints with the respondents, no action has been taken against it. Three violations of the Constitution were raised, i.e. noise pollution, waste/affluence disposal or status and overhanging trees with the electricity lines cutting through.
20. The particulars of the said violations are as captured in paragraphs 2, 3, and 4 above. It appears that after this petition was filed the respondents woke from slumber, because that is when action was seemingly taken in terms of conducting investigations and environmental assessment. The facts of the violations against the petitioner were not opposed or challenged, and in fact from the investigations, a lot more was discovered. Indeed, it was found that the 1st respondent was playing loud music, the waste water drains to the sewer system with a potential seepage to the petitioner's premises, and overgrown trees which would pose a risk and danger to the children and their caretakers. Further, the standby generator was found to have the potential to emit smoke and vibration causing noise. More so, there was no Environmental Impact Assessment report.
21. Further investigations by the 2nd respondent revealed that the 1st respondent did not in fact have the license to operate a night club, and its liquor license had expired and the same had not been renewed. In a bid to comply with the restoration order issued, the 1st respondent cut down trees, reduced the noise except on Sundays and undertook an EIA.



22. With regards to the discharge of waste, Section 87 (1) of the EMCA provides that:-
- “No person shall discharge or dispose of any wastes, whether generated within or outside Kenya, in such manner as to cause pollution to the environment or ill health to any person.”
23. In the case of JR Misc Application No 613 of 2016, Republic vs Nairobi City County Alcoholoc Drinks Control and Licensing Board & Another Exparte Space Lounge Bar & Grill Limited stated thus:-
- “I however appreciate that *the Constitution* of Kenya at Article 42 guarantees to all persons the right to a clean and healthy environment. This includes the right to peaceful environment devoid of noise and the right not to be pollute the morality of the area residents and their children.....it is upon the operators of leisure and social places to ensure that they conduct their businesses in a manner that does not violate the rights of others.....”
24. Indeed, *the Constitution* is clear that the best interests of a child are paramount and in this case, the development stages of the petitioner’s children that they take care of are critical at these stages. It is therefore necessary that the environment in which these children are raised is clean, healthy and safe. In my view, the petitioner has proved the said violations which demand intervention by the court. Section 3 (5) (e) and (f) of the EMCA provides that:-
- “In exercising the jurisdiction conferred upon it under subsection (3), the Environment and Land Court shall be guided by the following principles of sustainable development—
- (e) the polluter-pays principle; and
 - (f) the pre-cautionary principle.”
25. The petition dated 22nd January, 2025 is hereby allowed and the court proceeds to grant the following orders:-
- i. A declaration is hereby issued that the continued operation of the 1st respondent’s business within the petitioner’s area of residence violates the petitioner’s right to a clean and healthy environment, as well as the best interests of the child, as contemplated by Articles 26(1), 42(1) and 53(2) of *the Constitution* of Kenya.
 - ii. A declaration is hereby issued that the waste emanating from the 1st respondent’s property constitutes a violation of the petitioner’s right to life, a clean and healthy environment as guaranteed under Articles 26(1) and 42(1) of *the Constitution* of Kenya.
 - iii. A permanent injunction restraining and/or prohibiting the 1st Respondent herein by either themselves, their servants and/or employees and/or anybody whatsoever from further operation of live music, streamed music and/or any other kind of noise that would destruct the quiet and peaceful possession of the petitioner.
 - iv. A permanent injunction is hereby issued restraining and/ or prohibiting the 1st respondent, their agents, servant, or any other person from discharging waste from their property onto the petitioner’s property.
 - iv. The area OCS Muthangari Police Station to ensure compliance with the above orders.
 - iv. The petitioner is awarded the costs of this petition to be borne by the 1st respondent.



Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 28TH DAY OF NOVEMBER, 2025.

HON. MBOGO C.G.

JUDGE

28/11/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kevin Mualo for the Petitioner

Ms. Kiso for the 2nd Respondent

Ms. Muyai for the 3rd Respondent

No appearance for the 1st Respondent

