

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KWALE**

**ELC PETITION NO. E007 OF 2025**

**IN THE MATTER OF: ARTICLES 2 (1), 3 (1), 10 (2), 19, 20, 22, 23, 24, 27,42, 48, 50 (1), 69, 70, 159, 258 & 259 OF THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF: THE CONTAVENTION OF SECTIONS 101, 102 & 103 OF THE ENVIRONMENTAL MANAGEMENT AND CO - ORDINATION ACT AND ENVIRONMENTAL MANAGEMENT AND COORDINATION (NOISE AND EXCESSIVE VIBRATION POLLUTION) (CONTROL) REGULATIONS, 2009;**

**BETWEEN**

**GRAND MOTEL HOLDINGS LTD..... PETITIONER**

**-VERSUS**

**MARTIN KAARIA T/A ICON BAR.....1<sup>ST</sup> RESPONDENT**

**VIPI LOGIX ENTERPRISES.....2<sup>ND</sup> RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF KWALE.....1<sup>ST</sup> INTERESTED  
PARTY**

**NATIONAL ENVIRONMENT MANAGEMENT**

**AUTHORITY (NEMA) KWALE COUNTY.....2<sup>ND</sup>  
INTERESTED PARTY**

**RULING**

**I. Introduction**

**1.** Before this Honourable Court for its determination, its Ruling unto the Notice of Motion Application dated 13<sup>th</sup> May, 2025 by the Petitioner/Applicant herein - “*Grand Motel Holdings Limited*”. The application was brought under the dint of the provisions of Articles 2 (1), 3 (1), 10 (2), 19, 20, 22, 23, 24, 27,42, 48, 50 (1), 69, 70, 159, 258 & 259 of the Constitution of Kenya 2010.

**2.** Upon service, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents while opposing the said application filed their replies vide a replying Affidavit dated.....accordingly. The Honourable Court shall be dealing with the said pleadings at a later on stage of this Ruling thereof.

**II. The case by the Petitioner**

3. The Petitioner sought for the following orders:-

**a) Spent.**

**b) That an interim conservatory order be issued to prohibit the Respondents from operating their business which is the bar and restaurant situated in Ukunda along Likoni-Lungalunga road commonly known as "Icon Bar" pending hearing and determination of this application and suit.**

**c) That an interim conservatory order be issued to prohibit the Respondents from operating their business which is the bar and restaurant situated in ukunda along Likoni-Lunga Lunga road commonly known as "Icon Bar" above the permitted noise levels prescribed by the Interested Party pending the hearing and determination of this application and suit.**

**d) That the courts issue an order compelling the interested parties to jointly and severally prosecute the Respondents or any other person causing noise pollution.**

**e) That the costs of this application be provided for.**

4. The application was premised upon grounds on its face it, testimonial facts, the averments made out under the 16 Paragraphed supporting affidavit of JOE NJUNGE MWANGI

the director of the Petitioner company together with annexetures marked as "J - 1 to 6" annexed thereto. He averred as follows that:-

- a) He was a male adult of sound mind and well versed with the issues raised in this case and hence competent to swear this affidavit.
- b) As the Director of the Petitioner company, he had erected a three storey building on his property and ran a business under the name Grand Motel Diani and which business he had run for 20 years.
- c) The Respondent's business was adjacent to his business and consisted of a bar, restaurant and an open nyama choma area commonly known as "**Icon Bar**".
- d) The Respondents bar operated as a day and night club and plays loud music and karaoke late into the night or early morning thus causing excessive noise and vibrations which had been a nuisance to the hotel and residents for many years.
- e) The noise emanating from the Respondent's bar was loud, annoying, offensive and interfered with the comfort, repose, health and safety of members of the public hence

amounting to an offence under the Environmental Management and Co - ordination [Noise and Excessive Vibration Pollution] [Control] Regulations 2009 made under the Environmental Management and Coordination Act[EMCA] and county regulations on noise.

- f) By reason of the loud music during the day and night, jeers and shouts from revellers, clients had been unable to have a peaceful stay or night sleep and was always awake to the morning hours when the music stopped and the bar was closed.
- g) The excessive noise had infringed the Petitioners right to a clean and healthy environment.
- h) The situation had been gradually worsened over the years and more recently, the noise level had increased to excessive levels that had turned away guests from the hotel and apartments, some leaving negative feedbacks on social media platforms, cancelled bookings and others demanding refunds in the middle of the night.
- i) He tried reaching out to the 1<sup>st</sup> Respondent to settle the issue but all had been in vain. He also approached the

owner of the business to which he had rented the premises from but all bore no fruits.

j) His Advocates on record wrote a letter of complaint to the Respondents and the Interested parties dated 30<sup>th</sup> May, 2024; while on 20<sup>th</sup> June 2024 the 2<sup>nd</sup> Interested Party visited the premises and issued an improvement notice dated 20<sup>th</sup> June 2024 which they did not comply with. That vide a letter dated 5<sup>th</sup> July 2024 issued guidelines but the Respondents blatantly refused to take action and the noise has not abated.

k) Should the noise emanating from the Respondents premises continue, the Petitioner and other members of the public stood to suffer psychological torture and economic loss caused by the loss of business.

l) That should the noise continue the Petitioner and other members of the public will continue to suffer physiological torture.

m) That was what had informed the filing of the application before court.

### **III. Further Supporting Affidavit**

5. The application was further supported by an affidavit dated 29<sup>th</sup> May 2025 sworn by MAMO. B. MAMO the Director General of the 2<sup>nd</sup> Interested Party. He averred that:-

- a). In response to the Petitioner and the directions of the court, the 2<sup>nd</sup> interested party caused a site inspection to be undertaken.
- b). The report of the inspection was dated 28<sup>th</sup> May 2025 and was produced before court.
- c). The report was axiomatic and the recommendations thereof constituted the position of the 2<sup>nd</sup> interested party.

#### **IV. The 1<sup>st</sup> & 2<sup>nd</sup> Respondents case**

6. The application was opposed by a 21 paragraphed affidavit sworn by MARTIN KIMANI KAARIA the 1<sup>st</sup> Respondent and director of the 2<sup>nd</sup> Respondent. He averred as follows that:-

- a) He was the 1<sup>st</sup> Respondent and the Director of the 2<sup>nd</sup> Respondent herein and well versed with the facts of this matter and hence competent to swear this Affidavit.

b) The Respondents had been in operation for nine (9) years.

Throughout these years, they had maintained a cordial relationship with the Petitioner.

c) Their businesses complemented each other, whereby some of their patrons booked accommodation at the Petitioner's establishment while the guests from the Petitioner visited the Respondents establishment for meals, refreshments, and entertainment.

d) It was averred that both the Petitioner's and the Respondent's premises were situated in a commercial area along the busy Likoni - Lunga Lunga highway; between the Naivas supermarket and the Total Petrol station. This is a very busy section of Ukunda, with various businesses operating as bars, restaurants, scrap metal dealers, garages, open-air markets, and a bus stop, all of which may produce a considerable amount of noise.

e) The Respondent never had any sound amplifying equipment on the premises; The sole source of music was a VON home theatre that had 3 small surrounding speakers and one main speaker that was rated for home

usage. This system could not and never caused the noise and excessive vibrations as alleged by the Petitioner.

- f) The Respondents bar had never held any concert or Karaoke at the premises as alleged by the Petitioner and the Petitioner is put to strict proof thereof. The Respondents do not have the equipment to facilitate this nor had they ever hired a DJ or artist to perform at the bar.
- g) Also that music in their premises was reduced at night and they had put up signage to notify the patrons and staff that there should be minimal music played past 11.00 pm. This was done sometime in the year 2024 and staff were required to strictly comply with this requirement of the Respondents management. The club manager also ensured that the requirement was adhered to by conducting random visits and inspection.
- h) The director of the Petitioner consulted him sometime in July 2024 and Immediately upon the consultation the Respondents embarked on soundproofing the establishment by fitting it with a gypsum ceiling with a form layer in between and closing some open spaces that were towards the back of the bar. After which, they

started implementing the restoration orders as directed by Nema.

- i) He acknowledged that they received the Environmental Restoration Orders from NEMA on 5<sup>th</sup> July 2024, which they acknowledged and accepted to comply with. That they had installed a soundproofing ceiling, which comprises a layer of foam and a double layer of gypsum designed to absorb sound and minimize the noise emanating from their premises. That they had also covered the open spaces to minimize the noise emanating from their premises.
- j) Further that they conducted a noise assessment survey at their premises, during which they invited the Petitioner to be part of this process.
- k) The deponent went on to further highlight the many amendments that had been made pursuant to the directions of NEMA and stated that the same had complied with the standards set.
- l) From the report marked NEMA1, at page 4 and No.2 it was confirmed that the Petitioner had failed to renew the annual Environmental Audit report as well as renew its

Effluent Discharged License and has thus approached court with unclean hands.

m) The deponent asked the Honourable Court to compel the Petitioner to produce their Environmental Impact Assessment Report as well as the Effluent Discharge License as is required by law as this report will provide information on how environmental factors, such as the high ambient noise from the road and the surrounding affects their clients and the mitigation measures they had taken to control it, if any.

n) The deponent sought for more time to fully comply with the recommendations from NEMA and also sought for directions from this Honourable Court as regards the EIA as well as Environmental Audit and endeavoured to comply with the same at the earliest.

o) The Respondents prayed that the application be dismissed with costs.

## **V. Submissions**

7. On 26<sup>th</sup> June, 2025 while all the parties were in Court, they were directed that the Notice of Motion application dated

13<sup>th</sup> May, 2025 to be disposed off by way of written submissions.

8. Pursuant to that, all the parties complied and the Honourable Court reserved 27<sup>th</sup> October, 2025 as the date to deliver its Ruling. However, it was eventually delivered on 9<sup>th</sup> December, 2025.

#### **VI. The Written Submissions by the Petitioners**

9. The Law firm of Messrs. Mwangi Kihira & Co Advocates submitted on behalf of the Petitioner herein. They filed their written submissions dated 5<sup>th</sup> July, 2025. Mr. Kihira Advocate commenced his submissions by providing a brief summary of the Petitioner's, the Respondents and that of the Interested Party's case. The Learned Counsel submitted that an inspection was done on the Respondents' facility by the 2<sup>nd</sup> Interested Party on 15<sup>th</sup> May 2025 the same day the Honourable Court issued interim orders. There was a woofer of maximum volume 60 with two speakers in the facility.

10. In reference to the guidelines of 5<sup>th</sup> July 2024, it was submitted that it was evident that the Respondents had flouted all the guidelines by NEMA. There was no sound

proof in the facility thus causing noise pollution, there were speakers that used amplified sound.

11. The Learned Counsel further averred that in the annexed report by the Respondents, it was purported that there was sound amplifying equipment. From the Respondents' report, when the sound measuring exercise was done on 23<sup>rd</sup> to 25<sup>th</sup> May, 2025, it was purported that the said speakers were not there. According to the Counsel, this clearly showed malice on the part of Respondents in defeating justice by removing the speakers during the exercise. Therefore, the Honourable Court was asked to disregard the said report by the Respondents.

12. The Learned Counsel made reference to the provisions of Article 70(1) of the Constitution of Kenya, 2010 on the legal remedies available to any person aggrieved by an alleged infringement on their right to a clean and healthy environment. The Court was referred to the holding in the case of: ***“Evergreen Apartments Management Limited - Versus - Foody Freshi t/a Hera Aqua Gardens & 6 others (Environment & Land Case E451 of 2021) [2022] KEELC 2858 (KLR) (7<sup>th</sup> July 2022) (Ruling)”*** where the court issued an injunction against the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Respondent

restraining them from operating their business establishments in the area after failure to observe directions issued by NEMA.

**VII. The Written Submissions by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents**

13. The submissions were commenced by a brief summary of both the Petitioners and Respondents case which reiterated what was stated in the affidavit evidence of both parties. The court will therefore not reproduce the same in this summary. The Respondents submitted that a Noise Assessment Report conducted by an independent expert over three consecutive days, which confirmed that:

- a) Noise levels were within permissible legal limits during operations of the Bar premises.
- b) The primary source of noise was identified as external factors, such as road traffic and matatus, not the Respondents' premises. "Environmental factors, such as strong winds reported by the Kenya Meteorological Department, did contribute to elevated noise levels. Nevertheless, the primary

noise sources identified were vehicle traffic along the busy Likoni Lungalunga highway.

- c) The Respondents' soundproofing measures (gypsum ceiling and foam layers) were effective in minimizing noise. ....“To prevent noise exceedances, that may be contributed by the club, the club has installed gypsum ceiling on all its ceiling which has contributed in minimizing the level of noise emanating from the establishment. It was also observed that the club does not have any sound amplifying equipment and solely depend on a Home Theater Appliance for music.”

14. The Learned Counsel further briefly submitted on the report by the 2<sup>nd</sup> Interested Party and stated that the report lacked Empirical Noise Assessment. That as a regulator, the Interested Party ought to have collected actual sound levels using precision instruments and then in turn use the information to determine noise exposure for regulatory compliance, community impact and recommendations on way forward.

15. That the Report filed alleges that the Respondents' premises cause noise pollution but fails to provide decibel measurements to prove violations of permissible noise levels under the law. Instead, it relies on; a subjective anecdote from a representative of the Petitioner's unverified allegation that the Respondent's ..... " Play loud music from 10.00 pm to 5.00 am"..... without objective data. The report goes on to give a visual observation as follows ".....It was observed that Icon club has a woofer of maximum volume 60 with two speakers" this is a mere description of speakers without decibel readings or compliance testing.

16. That the Legal Requirement was that: The Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009, require quantifiable evidence (e.g., decibel measurements and or readings) to establish a violation. The interested party's failure to conduct or cite such measurements renders its findings legally untenable. The court was urged to disregard the interested party's report in totality and uphold the Respondent's right to a fair hearing. As for

the application for conservatory orders, it was submitted that the same was premature, as the Respondents are actively complying with NEMA's directives and no urgency has been proven. Neither has the Petitioner demonstrated that they will suffer irreparable harm that cannot be compensated by way of damages.

17. The Respondents urged the Court to uphold the rule of law by dismissing unsubstantiated claims and rewarding compliance with regulatory directives. To buttress their case, the 1<sup>st</sup> & 2<sup>nd</sup> Respondents cited the following cases:-

- a) ***Jaygee Limited & another - Versus - Githome t/a The Wine & Bottle Bar & Grill & 2 others (Environment & Land Case 5 of 2023) [2024] KEELC 558 (KLR).***
- b) ***Lamba & another - Versus - Pearls Kids Academy Limited & 3 others (Environment & Land Petition E008 of 2024) [2024] KEELC 5988 (KLR)***

### **VIII. Discussions and determination**

18. I have carefully read and considered the Notices of Motion application herein by the Petitioner, the responses thereto by the 1<sup>st</sup> & 2<sup>nd</sup> Respondents, the Interested parties and the submissions and the myriad of cases cited

herein by parties, the relevant provisions of the Constitution of Kenya, 2010 and statutes.

19. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has framed three [3] salient issues for its determination. These are: -

***a) Whether the Notice of Motion application by the Petitioner meets the threshold to be granted Conservatory orders.***

***b) Whether the Petitioner has made a case that is deserving of the interim conservatory orders sought.***

***c) Who bears the costs of the application?***

***ISSUE No. a). Whether the Notice of Motion application by the Petitioner meets the threshold to be granted Conservatory orders.***

20. Under this Sub - title, the Honourable Court will be examining whether the application by the Petitioner meets the threshold to be granted the conservatory orders sought. It is now settled that an Applicant for conservatory interim orders must demonstrate that: -

a. He has a prima facie case.

b. Unless the conservatory or interim order is granted he is likely to suffer prejudice or injury as a result of

violation or threatened violation of his constitutional rights or the constitution.

c. It would be in the public interest to grant the order.

21. The Supreme Court in the case of "***Gatirau Peter Munya - Versus - Dickson Mwenda Kithinji and 2 others, Supreme Court of Kenya, Petition No 2 of 2014 (unreported)***", stated that: -

***"Conservatory orders" bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court in the public interest. Conservatory orders, therefore, are not unlike interlocutory injunction, linked to such private-party issues as "the prospects of irreparable harm" occurring during pendency of a case; or "high probability of success" in the Applicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes and priority levels attributable to the relevant causes."***

22. The prerequisite conditions to be established and proven before a conservatory order can issue were further

elaborated upon in the case of “**Board of Management of Uhuru Secondary School - Versus - City County Director of Education & 2 others [2015] eKLR**”, where the court stated as hereunder;

***25. Foremost, the applicant ought to demonstrate a prima facie case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice. As was stated by Musinga J (as he then was) in the case of Centre for Rights Education and Awareness and 7 Others -Versus- The Attorney General [HCCP No. 16 of 2011]: “[Arguments] in this ruling relate to the prayer for a conservatory order in terms of prayer 3 of the Petitioner’s application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution”.***

***26. It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify***

***a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis. In these respects, I would quickly make reference to M. Ibrahim J (as he then was) in the case of Muslims for Human Rights [MUHURI] & Others - Versus - Attorney General & Others CP No. 7 of 2011, who whilst agreeing with Musinga J's statement in Centre for Rights Education and Awareness [CREAW] and 7 Others - Versus - The Attorney General (Supra) stated as follows:-"I would agree with my brother that an applicant seeking conservatory orders in a Constitutional case must demonstrate that he has a prima facie case with a likelihood of success"***

**ISSUE No. a). Whether the Petitioner has made a case that is deserving of the interim conservatory orders sought.**

23. Under this sub - heading, the Honourable Court will be assessing whether the application by the Petitioner is meritorious and hence needs to be granted the orders as sought.

24. In order for a prima facie case to be established, it is imperative of the Petitioner to demonstrate that the noise

being emitted from the Respondents premises exceeded the prescribed limit. The way to go about this would be to place before the court evidence vide an expert report in the manner prescribed under the provision of Section 6 of the Regulations pertaining to noise and pollution.

**25.** The provisions of Section 6 of the Regulation stipulates thus:-

**6.Measurement and control**

**(1) No person shall cause noise from any source which exceeds any sound level as set out in the applicable column in the First Schedule to these Regulations.**

**(2) Measurements shall be taken by the relevant lead agency.**

**(3) In any cases where there is no relevant lead agency to take the measurements, or where the lead agency has failed to take action after being given reasonable notice by the Authority, the measurement shall be taken by a person dully authorized by the Authority, who is knowledgeable in the proper use of the measuring equipment.**

**(4) The Authority in consultation with the relevant lead agency may issue guidelines for the measurement of noise and excessive vibration.**

**(5) Any person who makes noise in excess of the prescribed levels commits an offence.**

26. It is noted by the court that an inspection was done on the Respondents' facility by the 2<sup>nd</sup> Interested Party on 15<sup>th</sup> May 2025. From it, it was stated that there was a woofer of maximum volume 60 with two speakers in the facility. According to the Petitioner and in reference to the guidelines of 5<sup>th</sup> July 2024 which had earlier been issued upon the Respondents, it was evident that the Respondents had flouted all the guidelines by NEMA. The Petitioners stated that there was no sound proof in the facility thus causing noise pollution, there were speakers that used amplified sound.

27. The Honourable Court notes that a noise assessment report was filed by the respondents and which contradicts the report filed by the interested party NEMA. From the Respondents' report, when the sound measuring exercise was done on 23<sup>rd</sup> to 25<sup>th</sup> May 2025, it is purported that the noise levels were normal and permissible. The

respondents have further challenged the report presented by the petitioner and states that the alleged noise is from external factors like the passing by motor vehicles and the activities besides both premises.

28. It was further alleged that the Petitioner had not furnished any noise assessment report or decibel level readings to demonstrate that the Respondents' operations exceed permissible limits under the Environmental Management and Coordination (Noise and Excessive Vibration Pollution)(Control) Regulations, 2009.

29. I however note that the Respondents have not denied operating the business and playing music as has been stated. The Respondents have also confirmed that directives were earlier issued by NEMA and which they have not complied with. They sought for more time. The court is tasked with determining whether the rebuttal by the Respondents is cogent enough. In my opinion, there has been no effort from the Respondents to comply with the terms by NEMA, this actions have clearly breached the Petitioners rights.

30. The provision of Article 42 of the Constitution of Kenya gives every individual the right to a clean and healthy environment which includes exploring legislative and other measures particularly those under the provision of Article 69 and to have the obligations relating to the environment fulfilled under the provision of Article 70 which states that if a person alleges that a right to clean and healthy environment recognized and protected under the provision of Article 42 has been or is being and 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.

31. From the foregoing, this court is convinced that a prima facie case has been established.

32. The court notes that the parties herein both operate businesses and which are their means of livelihood. The petitioner is apprehensive that the Respondents' actions have caused damage to their clientele based on the noise vibrations. The court also notes that given the nature of business carried out by the respondent, it will be proper to have the orders issued over a limited period of time so as

to not paralyse their business. The court is also alive to the fact that at this stage is not to make hard conclusions on the matter as that is saved for the full hearing where evidence will be adduced.

**ISSUE No. c). Who bears the costs of the application?**

33. It is now well established that the issue of costs is discretionary of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to mean: -

***“the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other” 29.***

34. The proviso of Section 27 of the Civil Procedure Act, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 [1] provides as follows: -

**“1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge,**

**and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”**

35. In this case, as this Honourable Court is of the opinion that the Petitioner shall have the costs of the Notice of Motion application herein.

36. The court further wishes to state that the decision to prosecute the Respondents by the 2<sup>nd</sup> interested party is upon the said party and the court will in no way order for it as has been sought in prayer [4] of the application.

#### **IX. Conclusion & Disposition**

37. Consequently, having caused an indepth analysis of the framed issues herein, and based on the Principles of Preponderance of Probabilities and the balance of convenience, the Honorable Court proceeded to make the following decision: -

- a) **THAT** the Notice of Motion Application dated 13<sup>th</sup> May, 2025 be and is hereby found to have merit and thus allowed as prayed.
- b) **THAT** an interim conservatory order be and is hereby issued to prohibit the 1<sup>st</sup> & 2<sup>nd</sup> Respondents from operating their business which is the Icon bar and restaurant situated in ukunda along Likoni - Lunga Lunga road commonly known as icon bar above the permitted noise levels prescribed by the Interested Party for a period of 15 days to ensure compliance with the directives issued by the 2<sup>nd</sup> interested party NEMA on 5<sup>th</sup> July 2024.
- c) **THAT** failure to comply with Order [1] above will automatically lead to a further 30 days of extension of the Interim Conservatory Orders until compliance.
- d) **THAT** expediency sake, there be a Pre - Trial Conference conducted on 4<sup>th</sup> March, 2026 pursuant to the requirements of case management under Order 11 of the Civil Procedure Rules, 2010. There

be a hearing on 15<sup>th</sup> July, 2025 preferably through physical means.\_

e) THAT costs of the application to the Petitioner.

**IT IS ORDERED ACCORDINGLY.**

**RULING DELIVERED THROUGH THE MICRO - SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....9<sup>TH</sup> ..... DAY OF .....DECEMBER.. .....2025**

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**HON. MR. JUSTICE L.L NAIKUNI,**

**ENVIRONMENT & LAND COURT**

**AT**

**KWALE.**

**Ruling delivered in the presence of: -**

- a) Mr. Daniel Disii, the Court Assistant.
- b) Mr. Mungai Kihira Advocate for the Petitioner/Applicant.
- c) M/s. Saeta Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents.
- d) Mr. Nganya Advocate holding brief for Mr. Gitonga for the 2<sup>nd</sup> Interested Party.
- e) No appearance for the 1<sup>st</sup> Interested Party.