



**Eagle Palace Hotel v Chilis Tavern Limited & another (Environment & Land  
Case E065 of 2024) [2025] KEELC 23 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 23 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E065 OF 2024  
A OMBWAYO, J  
JANUARY 16, 2025**

**BETWEEN**

**EAGLE PALACE HOTEL ..... PLAINTIFF**

**AND**

**CHILIS TAVERN LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF NAKURU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Eagle Palace Hotel (hereinafter referred to as the applicant) has come to court seeking orders against Chilis Tavern Ltd (hereinafter referred to as the 1<sup>st</sup> respondent) and the County Government of Nakuru (hereinafter referred to as the 2<sup>nd</sup> respondent) that pending the hearing and determination of the suit, the 1<sup>st</sup> and 2<sup>nd</sup> respondents be compelled to install/ensure installation of noise mitigation measures, including reducing the volume of music or installing soundproofing within the establishment and to table those measures before this honorable court within timelines stipulated by this honorable court. The applicant further seeks a declaration that the plaintiff is entitled to a clean, safe and healthy environment under *the Constitution* of Kenya 2010. Lastly, that costs of the application be provided for.
2. The application is supported by the affidavit of Ibrahim Osman a Director of the applicant. The application is based on grounds that the 1st respondent operates a club/discotheque next to the applicant's hotel in an area of a mixed commercial and residential setting. The 1st respondent continuously plays loud music far exceeding the legally permissible noise levels thus disrupting the business operations of the applicant leading to his clients canceling their hotel bookings prematurely. The applicant has in the process suffered serious financial losses and his complaints to the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not yielded any positive results. He laments that the excessive noise emanating from the 1st respondent's establishment violates the applicant's constitutional right to a clean, safe and



healthy environment; and that the 2<sup>nd</sup> respondent has specifically failed in its regulatory mandate to control and regulate the noise pollution caused by the 1<sup>st</sup> respondent.

3. The 1<sup>st</sup> respondent filed a replying affidavit sworn by Daniel Moge Maina on 25<sup>th</sup> October 2024 in which he swore being the proprietor of the 1<sup>st</sup> respondent and deponed that the area under inquiry is a purely commercial zone falling within Nakuru Central Business District. The deponent nonetheless admitted that there have been complaints by the plaintiff about the loud music emanating from its business leading to the 1<sup>st</sup> respondent putting in place a raft of mitigation measures after intervention of the 2<sup>nd</sup> respondent and which were later inspected and given a clean bill of health by the 2<sup>nd</sup> respondent. However, the 1<sup>st</sup> respondent did not specify what mitigation/corrective measures it had put in place despite alleging that it had complied with the recommendations from the 2<sup>nd</sup> respondent and neither has the 1<sup>st</sup> respondent complied with the orders issued by this court on 6<sup>th</sup> November 2024 calling upon it to table a report within 15 days.
4. Equally, the 2<sup>nd</sup> respondent apart from filing a memorandum of appearance dated 29<sup>th</sup> October 2024 is yet to file a replying affidavit in response to the application by the applicant and the orders issued on 6<sup>th</sup> November 2024 by this honorable court.
5. In his submissions, counsel for the applicant asserts that the application is anchored on the provisions of articles 42 and 70 of *the Constitution* of Kenya, 2010. Article 42 read together with section 3 of the *Environmental Management and Co-ordination Act*, 1999 guarantees to everyone the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures and, to have obligations relating to the environment fulfilled under article 70 of *the constitution* of Kenya 2010.
6. According to counsel, Article 70 on the other hand as read together with section 3(3) of the *Environmental Management and Co-ordination Act*, 1999 (EMCA) deals with enforcement of environmental rights and allows a person who alleges that a right to a clean and healthy environment recognized and protected under article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, to apply to a court for redress in addition to any other legal remedies that are available in respect of the matter.
7. He urges that Article 70(2) of *the Constitution* of Kenya 2010 outlines a raft of remedies that the court dealing with an application under article 70(1) can give including making any orders, or directions, it considers appropriate to- (a) prevent, stop, or discontinue any act or omission that is harmful to the environment; (b) compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or (c) provide compensation for any victim of a violation of the right to a clean and healthy environment.
8. He contends that an applicant invoking article 70 of *the constitution* does not have to demonstrate that he/she has incurred loss or suffered injury. The applicant has also invoked the *Environmental Management and Co-ordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009*.
9. Regulation 3 outlines the general prohibitions, thus: 3(1) Except as otherwise provided in these regulations, no person shall make or cause to be made any loud, unreasonable, unnecessary or unusual noise which annoys, disturbs, injures or endangers the comfort, repose, health or safety of others and the environment. (2) in determining whether noise is loud, unreasonable, unnecessary or unusual, the following factors may be considered
  - (a) time of the day;



- (b) proximity to residential area;
  - (c) whether the noise is recurrent, intermittent or constant
  - (d) the level and intensity of the noise;
  - (e) whether electronic or mechanical means; and
  - (f) whether the noise can be controlled without much effort expense to the person making the noise.
- (3) Any person who contravenes the provisions of this regulation commits an offence.
10. Counsel argues that the applicant operates a hotel offering accommodation and conferencing facilities to its customers within Nakuru town in an area which, according to the applicant, is both a commercial and residential setting. Adjacent to the applicant's hotel is a club operated by the 1 respondent and within it is a discotheque and according to the applicant, there's loud, unreasonable, unnecessary and unusual music constantly emanating from the club which annoys, disturbs, injures, and endangers the comfort, repose, health and safety of the guests using the applicant's hotel.
  11. It is the applicant's case that the 1<sup>st</sup> respondent plays excessively loud music at its business contrary to Regulation 5 of the [Environmental Management and Coordination \(Noise and Excessive Vibration Pollution\) \(Control\) Regulations, 2009](#).
  12. The applicant asserts that the issue has been raised with the 1<sup>st</sup> respondent numerous times and intervention has also been sought from the 2<sup>nd</sup> respondent as the licensing authority to prevail upon the 1<sup>st</sup> respondent to abate the noise to no avail.  
  
In support of its case, the applicant has annexed to the application various correspondences showing cancellations of hotel bookings by clients as "10-01 " and a demand letter as "10-02".
  13. The 1<sup>st</sup> respondent on its part while admitting to the plaintiffs claim that there's noise emanating from its business has nonetheless contended that the same meets the prescribed noise levels since it has, following complaints by the applicant, put in place the necessary mitigation/remedial measures as recommended to it by the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent has referred to a report "DMM3" but which was not annexed to the replying affidavit and as such the same cannot be verified.
  14. The case against the 2<sup>nd</sup> respondent is anchored on the Fourth Schedule to [the Constitution](#), 2010 pursuant to which control of air pollution, noise pollution, other public nuisances and outdoor advertising are devolved functions of County Governments. Therefore, it is County Governments that license and regulate the affairs of entities falling within those devolved functions and it is the 2<sup>nd</sup> respondent who licensed the 1<sup>st</sup> respondent to operate the club within its jurisdiction.
  15. I have considered the application and do find that applicant and 1<sup>st</sup> respondent are neighbours at a Commercial Street in Nakuru City. The applicant is has invoked his constitutional right to a clean healthy environment, which is a constitutional right for every citizen. The complaint is against the 1<sup>st</sup> respondent whose club has allegedly caused noise pollution and allegedly denied the applicant to a clean and healthy environment.
  16. The court is urged to apply the precautionary principle to protect the environment and issue an order that pending the hearing and determination of the suit the 1<sup>st</sup> defendant to install noise mitigation measures including reducing the volume of music, or installing sound proofing within the establishment and that National Environmental Management Authority to visit the premises and prepare a report to be filed within a period to be fixed by the court.



17. I do find that the precautionary principle is applicable in this case to pre-empt a violation to the applicants right to a clean and healthy environment and to prevent damage to the plaintiffs business. One of the elements of the principle is the shift of the burden of proof. Traditionally, the person claiming an activity could cause harm should produce proof to back up that claim. The precautionary principle reverses the burden of proof—the individual or entity proposing the activity must prove the activity is not harmful.
18. The conditions for the granting of an interlocutory injunction are now well settled. In *Giella v Cassman Brown & Co Ltd* [1973] EA 358 at pg 360, it was stated as follows:-

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (EA Industries v Trufoods, [1972] EA 420.)”
19. In this matter I do find that the plaintiff has proved on prima facie basis that there is noise escaping from the 1<sup>st</sup> defendants premises that causes some discomfort to the plaintiff’s visitors at the hotel. The damage caused is irreparable since it has caused some visitors to check out of the hotel.
20. The balance of convenience tilts towards granting a conservatory order because the plaintiff will be inconvenienced if the order is not granted but the same will not apply to the 1<sup>st</sup> defendant because he has alleged that he has put the noise reduction measures in place.
21. I do hereby order that pending the hearing and determination of the suit, the 1<sup>st</sup> and 2<sup>nd</sup> defendants do install noise mitigation measures including reducing the volume of music or installing sound proof within the establishment and file an expert report within the next 15 days. Matter be and is hereby scheduled for hearing on February 27, 2025 at 8.30 a.m.

**RULING DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 16<sup>TH</sup> DAY OF JANUARY 2025.**

**A O OMBWAYO**

**JUDGE**

