

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAKURU**  
**ELC CONSITUTIONAL PETITION NO E009 OF 2025**

**FRANCIS KIPNGETICH LANGAT (CHAIRMAN)**  
**MICHAEL WANJAU CHECIE (SECRETARY)**  
**JOSEPH F, OKINYI OMWOYO (TREASURER)**  
**(Suing on their own behalf as officials of NAKURU MILIMANI**  
**RESIDENTS ORGANIZATION and on behalf of**  
**Nakuru Milimani Estate residents).....PETITIONERS**

**VERSUS**

**JADE HEKIMA LAWN LTD.....1<sup>ST</sup> RESPONDENT**  
**COUNTY GOVERNMENT**  
**OF NAKURU.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of a Notice of Motion application dated 16<sup>th</sup> October, 2025, by the Petitioner/Applicants seeking the following orders:
  1. *Spent.*
  2. *THAT the Court be pleased to grant a temporary order on injunction restraining the 1<sup>st</sup> Respondent JADE HEKIMA LAWN LTD BAR whether by itself, its Agents, servants or employees from playing loud music and /or emitting noise which is in any way interfering with the Applicant members' quiet possession and enjoyment of their properties pending the nearing and determination of this Petition.*
  3. *THAT pending the hearing and determination of this Petition, a conservatory order be issued restraining the 2<sup>nd</sup> Respondent from licensing, allowing or permitting the 1<sup>st</sup> Respondent or any other person, their agents, servants and*

*or any person acting on their behalf to operate a bar, club or alcoholic selling business on Title No. NAKURU MUNICIPALITY BLOCK 12/109 within Nakuru Milimani estate in Nakuru.*

- 4. THAT pending the hearing and determination of this Petition, this Honourable Court be pleased to issue an order revoking and/or suspending the current Trade Permit/license issued to the 1<sup>st</sup> Respondent.*
- 5. THAT the Honourable Court be pleased to issue Order for Certiorari to quash the 2<sup>nd</sup> Respondent's decision to issue a Trade Permit to the 1<sup>st</sup> Respondent allowing or permitting the 1<sup>st</sup> Respondent, or any other person, their agents, servants, and or any person acting on their behalf to operate a bar, club or alcoholic selling business on Title No. NAKURU MUNICIPALITY BLOCK 12/109 within Nakuru Milimani estate and consequently the Trade Permit issued to the 1<sup>st</sup> Respondent herein to operate a bar, club or alcoholic selling business within Nakuru Milimani estate does stand quashed and cancelled forthwith.*
- 6. THAT this Honorable Court be pleased to issue an Order restraining the 2<sup>nd</sup> Respondent from re-issuing, renewing, or otherwise granting any Trade Permit and Liquor license to the 1<sup>st</sup> Respondent.*
- 7. THAT the Officer Commanding Station (OCS) Kaptembwo Police Station to supervise and assist in implementation of the orders of this Honourable Court.*

**8. THAT the cost of this application be borne by the Respondents.**

**9. Any other order this Honourable Court may deem fit and just to grant.**

2. The application is supported by the annexed affidavit of Francis Kipngetich Langat, the Petitioner's Chairman, who deponed that the Petitioner's members are registered owners of properties, occupiers, licensees and tenants of various residential properties at Milimani Estate, Nakuru.
3. The Petitioner/Applicant further deponed that the Milimani Estate, was part of Zone 16 which is a medium-density residential area as per the Nakuru County Integrated Strategic Urban Development Plan. He also stated that despite the zoning restrictions, the 2<sup>nd</sup> Respondent in 2025, unprocedurally without public participation issued the 1<sup>st</sup> Respondent with a Trade Permit and liquor selling licenses allowing them to operate on title No. NAKURU MUNICIPALITY BLOCK 12/109 under a mega bar.
4. It was his disposition that the 1<sup>st</sup> Respondent plays excessively loud music which interferes with the peace and quiet enjoyment of the properties that neighbor the establishment in violation of the Petitioners right to property, and to live in a clean and healthy environment. Further, the noisy bar is also situated next to a learning institution KMTC, and a health facility, Nakuru Level 5 PGH which interferes with their services.

5. According to the deponent, the 2<sup>nd</sup> Respondent has since abdicated its statutory and constitutional mandate by allowing the 1<sup>st</sup> Respondent to continue subjecting the residents of Milimani Estate to public nuisance thereby infringing on their rights to property and to live in a clean and healthy environment. He also stated that the 2<sup>nd</sup> Respondent failed to implement the Nakuru City County Alcoholic Drinks Control Licensing Act despite the Petitioner's complaint.
6. The Applicant further stated that on 13<sup>th</sup> March 2025, the 2<sup>nd</sup> Respondent convened a meeting where it was agreed that the 1<sup>st</sup> Respondent will reduce the noise to below 35 decibels and visit the premises to ensure compliance, to which the 2<sup>nd</sup> Respondent and its Environment and Enforcement Team have not taken steps to contain the wanton noise pollution.
7. He therefore urged the court to grant the orders as prayed in the application with costs.
8. The Respondents did not file any responses to the application; it is unopposed.

#### **PETITIONER/APPLICANTS' SUBMISSIONS**

9. Counsel for the Petitioner filed submissions dated 26<sup>th</sup> January, 2026, and identified one issue for determination, as to whether the application has satisfied the conditions for grant of the orders prayed for in a constitutional

petition. Counsel submitted that the application satisfied the legal requirements for conservatory orders and relied on the case of **Law Society of Kenya V Office of the Attorney General & Anor, Judicial Service Commission (Interested part) (2020) eKLR.**

10. Mr. Githiru, further submitted that the 1<sup>st</sup> Respondent bar has resulted in noise pollution and health impact, and relied on a NEMA-licensed expert report showing noise levels reaching 72.56 decibels at night which was more than double the permissible limit of 35 decibels for residential areas. Further that the noise levels have caused grave and irreparable loss including health complications for elderly residents and the disruption of students at the nearby Kenya Medical Training College.
  
11. It was counsel's further submission that the operations of the 1<sup>st</sup> Respondent have resulted in violations of the Petitioner's right to clean and healthy environment, right to property and right to human dignity as provided for under **Articles 42, 40 and 28** of the Constitution respectively and relied on the cases of **Pastor James Jesse Gitahi & 2 Others V Attorney General Pet No. 683 of 2009** and **Muimara Estates Residents Association V Nairobi County & 2 Others (2015) eKLR.** Counsel also stated that the Respondent wrongly issued a Trade Permit and liquor license in breach of Section 14 of the Nakuru County Alcoholic Drinks Control and Licensing Act, 2014, which prohibits liquor sales in residential areas.

12. Similarly, counsel submitted that there was no public participation before the license was issued to the 1<sup>st</sup> Respondent, and that the Residents have suffered financial losses, as tenants have vacated rental properties due to the uninhabitable environment created by the noise in the 1<sup>st</sup> Respondent's bar.
  
13. Mr. Githiru also relied on the cases of **Judicial Review Misc Application No. 613 of 2016 R V Nairobi City County Alcoholic Drinks Control and Licensing Board & Anor, Exparte Space Lounge Bar & Grill Limited, Centre for Rights Education and Awareness (CREAW) & another – Versus - Speaker of the National Assembly & 2 others (2017) eKLR**, and **Article 70(3)** of the Constitution, and submitted that unless conservatory orders are granted, the Petitioner's members will continue to suffer huge economic losses, and urged the court to grant the orders as prayed.

#### **ANALYSIS AND DETERMINATION**

14. From the onset, it should be noted that the Petitioner filed this petition together with a Notice of Motion seeking orders as enumerated above in the application. The court gave directions that the Applicant serve the Application within 5 days and the Respondents to file responses within 5 days upon service. The parties were to file submissions with 10 days upon receiving the responses and the matter was to be mentioned on 10<sup>th</sup> November 2025.

15. When the matter came up for mention, Mr. Karanja Mbugua appeared for the 1<sup>st</sup> respondent and Mr. Nyamwange for the 2<sup>nd</sup> Respondent and there was no appearance for the 3<sup>rd</sup> Respondent although served. The 1<sup>st</sup> respondent only filed a Memorandum of appearance and nothing else. The 2<sup>nd</sup> Respondent neither filed a Notice of appointment of Advocate nor any documents.
16. It follows that the application and the Petition are not opposed. I notice that the 1<sup>st</sup> Respondent's counsel filed submissions dated 16<sup>th</sup> February 2026, which are not anchored on any responses to either the Petition or the application. I will therefore not rely on them for the said reason.
17. The issues for determination are whether the Applicant has met the threshold for grant of a temporary injunction, restraining the 1<sup>st</sup> Respondent from and its employees, servants and agents from playing loud music and/or emitting noise which is interfering with the Applicant's members quiet possession and enjoyment of their properties pending the hearing and determination of the petition, whether the court should issue conservatory orders restraining the 2<sup>nd</sup> Respondent from licensing, allowing or permitting the 1<sup>st</sup> Respondent or its agents, to operate a bar , club or alcoholic selling business on Title No. NAKURU MUNICIPALITY BLOCK 12/109 within Nakuru Milimani Estate in Nakuru, pending the hearing and determination of the Petition.
18. The Petitioner had sought some orders which are final in nature which the court will not deal with at this interlocutory stage.

19. In the case of **Centre for Rights Education and Awareness (CREAW) & another – Versus - Speaker of the National Assembly & 2 others (2017) eKLR**, the Court stated:

*“A party who moves the court seeking conservatory orders must show to the satisfaction of the Court that his or her rights are under threat of violation; are being violated or will be violated and that such violation, or threatened violation is likely to continue unless a conservatory order is granted. This is so because the purpose of granting a conservatory order is to prevent violation of rights and fundamental freedom and preserve the subject matter pending the hearing and determination of a pending case or Petition.”*

20. The Applicant must establish that their rights to a peaceful, quiet and healthy environment are under threat of violation. In the case of **Centre for Human Rights and Democracy & 2 Others V Judges and Magistrates Vetting Board & 2 Others Petition No 11 of 2012** the court observed that in deciding whether or not to grant conservatory orders, the following factors are relevance that is; the credential of the petitioner, *prima facie* correctness or nature of information available to the court whether the grievances expressed in applying for conservatory orders are genuine legitimate deserving or appropriate, whether the applicant has demonstrated the gravity or seriousness of the dispute or whether the applicant is engaged in wild vague indefinite or reckless allegations.
21. The Petitioners have complained of excessive noise pollution by the 1<sup>st</sup> Respondent who was licensed by the 2<sup>nd</sup> Respondent and is operating a bar

business selling alcoholic drinks within the residential estate and an educational institution, specifically Kenya Medical Training College. The Petitioners also relied on an Expert report which recorded the noise level at 67 decibel which is beyond the allowable limit of 35 decibels.

22. In the case of **Mumara Estate Residents Association vs Nairobi County & 2 Others [2015] eKLR** the court held thus:

*“It is therefore the law that there should be no liquor selling near schools or in residential areas. The reasons for this are not far to seek: schools are places for learning and inculcating morals and good upbringing of children and any young persons while residential areas are living places where residents and their families seek rest. After the hustle and bustle in their places of work, they retreat to residential areas for rest and wellness. That is also the place where they bring up their families. They expect least disturbance and that is why the law prohibits liquor selling in residential estates. Such places require peaceful and healthy environment for rest and co-existence.”*

23. Prevention of noise and vibration is recognized as a component of a clean and healthy environment as was held in the case of Pastor **James Jesse Gitahi & 2 Others V Attorney General Pet No. 683 of 2009**, thus:

*“.....prevention of noise and vibration pollution is now recognised as a component of a clean and healthy environment. Noise pollution covers sound which can result in hearing impairment while vibrations pollution covers vibrations transmitted to the human body through solid structures. Both*

*excessive noise and vibration can cause injury to the body hence the need to regulate the levels of noise through the regulations.....which have a general prohibition against loud, unreasonable, unnecessary or unusual noise which annoys, disturbs, injures or endangers the comfort repose, health or safety of others and the environment. In determining whether the noise is loud several factors are considered including the time of day, the proximity to a residential neighbourhood, whether the noise is recurrent, intermittent or constant, the level or intensity of the noise, whether the noise has been enhanced by any electronic or mechanized means or whether the noise can be controlled without effort or expense to the person making the noise”.*

24. In the case of **JR Misc Application No 613 of 2016, Republic vs Nairobi City County Alcoholoc Drinks Control and Licensing Board &Another Ex -parte Space Lounge Bar & Grill Limited (supra)** the court held 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.....”*

25. The court is cognizant of the fact that it is not supposed to deal with the merits of the petition at this interlocutory stage, and that is why it stated at the onset that the Applicant had sought some orders which are of a final nature and the court did not deal with them.
26. I have considered the application, the submissions by counsel, find that the application has merit, and issue the following specific orders.
- a) ***A temporary order on injunction is hereby issued restraining the 1<sup>st</sup> Respondent JADE HEKIMA LAWN LTD BAR whether by itself, its Agents, servants or employees from playing loud music and /or emitting noise which is in any way interfering with the Applicant members' quiet possession and enjoyment of their properties pending the hearing and determination of this Petition.***
  - b) ***A conservatory order is hereby issued restraining the 2<sup>nd</sup> Respondent from licensing, allowing or permitting the 1<sup>st</sup> Respondent or any other person, their agents, servants and or any person acting on their behalf to operate a bar, club or alcoholic selling business on Title No. NAKURU MUNICIPALITY BLOCK 12/109 within Nakuru Milimani estate in Nakuru.***
  - c) ***The Officer Commanding Station (OCS) Kaptembwo Police Station is hereby directed to supervise and assist in implementation of the orders of this Honourable Court.***
- a) ***Costs of the application to abide by the outcome of the petition.***

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 11<sup>TH</sup>  
DAY OF MARCH 2026.**

**M. A. ODENY  
JUDGE**