

**REPUBLIC OF KENYA**

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

**ELCLA NO. E051 OF 2024**

**THE REGISTERED OFFICIALS AND TRUSTEES OF LIFE  
TRANSFORMING CENTRE .....  
APPELLANTS**

**VERSUS**

**DARAJANI HOTEL LIMITED..... 1<sup>ST</sup>  
RESPONDENT**

**BRIDGE HOTEL LIMITED ..... 2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

**A. Introduction**

1. This is an appeal against the judgment of the National Environment Tribunal (the Tribunal) dated 19.11.2024 in Tribunal Appeal No. E007/2023 - Darajani Hotel Ltd and Bridge Hotel Ltd -vs- National Environment Management Authority & 3 Others. By the said decision, the Tribunal directed the 3 churches sued therein as the 2<sup>nd</sup> - 4<sup>th</sup> respondents to soundproof their respective churches to ensure that the sound generated during their worship

activities is contained within their premises. The appellant was the 3<sup>rd</sup> respondent in the said appeal.

## **B. Background**

2. By their memorandum of appeal dated 17.12.2024 and amended on 21.03.2025 the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (the respondents) pleaded that the appellants and the other churches which operated within the vicinity of their hotels were generating so much noise pollution which had adversely affected their hotel business. They pleaded that despite several complaints lodged with the National Environment Management Authority [NEMA] the latter had failed to take steps under the *Environmental Management and Coordination Act, 1994 [EMCA]* to order the churches to mitigate or abate the noise pollution.

3. It was the respondents' case that the appellants and the other churches had continued with excessive noise pollution unabated with the consequence that they had suffered huge financial losses due to loss of clients. As a consequence, the respondents sought the following reliefs before the Tribunal.

*a) An order directing the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to sound proof their churches to ensure that any sound from their respective churches is contained therein.*

- b) An order directing the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to ensure that any sound from their respective churches is within the provisions of the Environmental Management and Coordination [Noise and Excessive Vibration Pollution Control] Regulations, 2009.*
- c) An order directing the 1<sup>st</sup> respondent to visit and inspect the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents' churches and file a compliance report on the status of their compliance with the orders of the Tribunal.*
- d) The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to jointly and severally indemnify the appellants for loss of business caused by the noise pollution emanating from their churches.*
- e) Costs of the appeal.*

4. The record shows that the appellants, who were the 3<sup>rd</sup> respondent before the Tribunal, filed a response dated 16.04.2024 in which they denied liability for the alleged noise pollution. They contended that the noise generated in their church was not in excess of the permitted noise levels within the meaning of the applicable law. The record shows the other 2 churches also filed responses denying liability for noise pollution. They contended that they were simply exercising their constitutional freedom of worship and that they had taken adequate measures to contain any noise within the permissible levels. However, NEMA did not file any response to the appeal and did not participate in its hearing.

### **C. Tribunal's decision.**

5. The record shows that upon hearing the evidence of the parties the Tribunal found that the respondents were entitled to enjoy a clean and healthy environment and that the appellants and the other two churches had violated that right. The Tribunal found that the evidence before it had demonstrated that the appellants' noise levels exceeded the limits permitted under the *Environmental Management and Coordination [Noise and Excessive Vibration Pollution [Control] Regulations, 2009*. The Tribunal, however, held that the respondents had not proved their claim for compensation for loss of business.

6. As a result, the Tribunal granted the following reliefs in its judgment.

*a) Noting that the 2<sup>nd</sup> respondent has stated that it is in the process of soundproofing its church, an order is hereby made directing the 2<sup>nd</sup> respondent to complete the said process of soundproofing within 90 days to ensure that any sound from their premises is contained therein.*

*b) Noting that the Appellants case against the 3<sup>rd</sup> and 4<sup>th</sup> respondents is uncontroverted, an order is hereby*

*issued directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents to ensure forthwith that any sound from their respective churches is within the provisions of Environmental Management and Coordination [Noise and Excessive Vibration Pollution Control] Regulations, 2009.*

*c) In alternative to [b] above, the 3<sup>rd</sup> and 4<sup>th</sup> respondents are directed to soundproof their churches to ensure that any sound from their respective churches is contained therein.*

*d) The 1<sup>st</sup> respondent is ordered to visit and inspect the 2<sup>nd</sup> and 3<sup>rd</sup> and 4<sup>th</sup> respondents' churches and file a compliance report on the status of their compliance with the above orders above within 90 days.*

*e) The 3<sup>rd</sup> and 4<sup>th</sup> respondents shall meet the appellants' costs of the appeal.*

*f) In default of compliance with any of the above orders, the appellants shall be at liberty to move the Tribunal for appropriate action.*

**D. Grounds of appeal.**

7. Being aggrieved by the said decision the appellants filed a memorandum of appeal dated 17.12.2024 and amended on 21.03.2025 raising the following 7 grounds:-

- a) *The Learned Honourable Chairperson, Vice-Chairperson and members of the National Environment Tribunal erred in law and fact by entertaining a matter for which they had no jurisdiction.*
- b) *The Learned Honourable Chairperson, Vice-Chairperson and members of the National Environment Tribunal erred in law and fact by entertaining a suit concerning noise regulation which is a devolved function in accordance with the Fourth Schedule, Part 2 section 3 of the Constitution of Kenya 2010.*
- c) *The Learned Honourable Chairperson, Vice-Chairperson and members of the National Environment Tribunal erred in law and fact by allowing an appeal that did not conform with section 129[1] and [2] of the National Management and Coordination Act Cap 387 laws of Kenya.*
- d) *The Learned Honourable Chairperson, Vice-Chairperson and members of the National Environment Tribunal erred in law and fact by finding the appellant had exceeded the maximum prescribed levels without a determinate, final and conclusive measurement of the appellants' noise levels.*
- e) *The Learned Honourable Chairperson, Vice-Chairperson and members of the National Environment Tribunal erred in law and fact by determining the issue of costs without hearing the appellant on that issue.*

**E. Directions on submissions.**

8. When the appeal was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the appellants filed submissions dated 23.11.2025 but the respondents' submissions were not on record by the time of preparation of the judgment.

**F. Issues for determination.**

9. Although the appellants raised 7 grounds in their memorandum of appeal, the court is of the view that the appeal may effectually be determined by resolution of the following issues:-

*(a) Whether the Tribunal had jurisdiction to entertain the appeal.*

*(b) Whether the Tribunal erred in law and fact in allowing the appeal.*

*(c) Who shall bear costs of the appeal.*

**G. Analysis and determination.**

**(a) Whether the Tribunal had jurisdiction to entertain the appeal.**

10. The court has considered the material and submissions on record. The appellants submitted that even though the question of jurisdiction was not canvassed before the tribunal, they were entitled to raise it at any stage because without jurisdiction a tribunals' proceedings and the resultant decision would be a nullity.

11. The appellants submitted that the issue of noise pollution was a devolved function which was within the province of county governments and not NEMA. The appellants relied upon Section 3 of the 4<sup>th</sup> Schedule to the Constitution and the case of *Elizabeth Kurer Heier and Another -vs- County Government of Kilifi and 4 Others [2020] KELA 645[KLR]* in support of that submission. It was further submitted that since the jurisdiction of the Tribunal was confined to hearing appeals against the decisions of NEMA, no appeal would lie to the Tribunal with respect to a matter falling outside the mandate of NEMA.

12. Section 129 [1] and [2] of EMCA on appeals stipulates as follows:-

[1] *Any person who is aggrieved by—*

*(a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;*

*(b) the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;*

*(c) the revocation, suspension or variation of the person's licence under this Act or its regulations;*

*(d) the amount of money required to paid as a fee under this Act or its regulations;*

*(e) the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its Regulations, may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.*

*(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.*

13. Under part 2 of the Fourth schedule to the Constitution, the functions devolved to the county governments include “control of air pollution, noise pollution, other public nuisance and outdoor advertising”. Although noise pollution is not defined in the said schedule or in the Constitution, Section 2 of EMCA defines noise as follows:-

*“noise means any undesirable sound that is intrinsically objectionable or that way cause adverse effects on human health or the environment”.*

The regulations also define noise in a similar manner.

14. The court takes the view that even though the control of noise pollution may have been within the mandate of NEMA under EMCA, the promulgation of the new Constitution of Kenya, 2010 expressly shifted that function to the respective county governments. That is the position which was taken by the Court of Appeal in the *Elizabeth Kurer Heier Case*.

15. It is clear that the respondents' appeal was not predicated upon Section 129[1] of EMCA because the “decision” the subject of the appeal had nothing to do with the grant or refusal of a licence; the imposition of a condition or restriction on a licence; the amount of money or fee imposed by law or regulation; or an improvement order. The respondents' case was simply that NEMA had **failed** or **neglected** to act on their complaint against the appellants.

16. The court takes the view that even if Section 129[2] were to be considered, it would follow that the decision the subject of the appeal to the Tribunal could only be in respect of a matter

which fell within the mandate of NEMA. The section is clear that it has to be a matter in which the Act “empowers the Director-General, the Authority or Committees of the Authority to make decisions”. As indicated before, the function of controlling noise pollution is no longer within the jurisdiction of NEMA thus no appeal would lie to the Tribunal in respect of any decision made by NEMA in that regard.

17. The court is thus satisfied that the Tribunal had no jurisdiction to entertain the respondents’ appeal since it was not filed pursuant to a decision taken by NEMA within its mandate. The court is further of the view that the proceedings and resultant decision by the Tribunal were a nullity for want of jurisdiction. It is also debatable whether or not mere “inaction” by NEMA on a matter falling within its mandate can be the subject of an appeal within the meaning of Section 129 of EMCA. The language of the Section seems to refer to positive administrative decisions taken as opposed to were inaction or neglect.

**(b) Whether the Tribunal erred in law and fact in allowing the appeal.**

18. The court has already found and held that the Tribunal had no jurisdiction to entertain the appeal since the function of

control of noise pollution was not within the mandate of NEMA. In the event, it would not matter whether the decision of the tribunal was right or wrong on merit. Either way, the resultant decision would be a nullity for want of jurisdiction. In the premises, it is not necessary to determine the issue on merit.

**(c) Who shall bear costs of the appeal.**

19. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to *Section 27 of the Civil Procedure Act (Cap 21)*. A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd [1967] EA 287*. However, the court is of the view that since it is the Tribunal which erred in law in entertaining and determining the appeal without jurisdiction, none of the parties should be penalized in costs. The court is thus of the view that the appropriate order to make on costs is for each party to bear its own costs of both the instant appeal and the proceedings before the Tribunal.

**H. Conclusion and disposal orders.**

20. The upshot of the foregoing is that the court finds merit in the appellants' appeal. As a result, the court makes the following orders for disposal thereof.

*a) The appeal be and is hereby allowed.*

*b) The judgment of the National Environment Tribunal dated 19.11.2024 in NET Appeal No. E007/2023 is hereby set aside in its entirety.*

*c) That each party shall bear its own costs of the instant appeal and the appeal before the Tribunal.*

It is so decided.

**Judgment dated and signed at Mombasa and delivered virtually via Microsoft Teams on this 19<sup>th</sup> day of March, 2026.**

.....  
**Y. M. ANGIMA**  
**JUDGE**

In the presence of:

Court assistant Gillian

Mr Aaron Mwanzia for the appellants

Mr Mugambi for the 1<sup>st</sup> and 2<sup>nd</sup> respondents

Mr Mkomba for the 1<sup>st</sup> Interested party

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