



REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
THIKA**

ELCEPA NO. ELCEPA NO. E004 OF 2024

**BEDARIN HOTEL LIMITED.....
APPELLANT**

VERSUS

**ESTHER WANGECI KIMANI.....1ST
RESPONDENT**

**RICHARD KIMANI KARIUKI.....2ND
RESPONDENT**

**NATIONAL ENVIRONMENT
MANAGEMENT AUTHORITY.....3RD
RESPONDENT**

(Being an appeal against the Decision and Orders of the National Environment Tribunal in Nairobi (by Hon. Emmanuel Mumia-Chairman, Hon Winnie Tsuma-Vice Chair, Duncan Kuria- Member and Hon Ronald Allamano - Member) as contained vide Judgment delivered on 21st July 2021 Esther Wangeci Kimani & Richard Kimani Kariuki -vs- National Environment Management Authority and Bedarin Hotel Limited)

AND

2ND NOTICE OF MOTION

**BEDARIN HOTEL
LIMITED.....APPELLANT/CONTEMNOR**

**DIRECTOR RACHAEL NJOKI NGAHU.....1ST CITED
OFFICER**

**JOSEPH IRUNGU MBURU.....2ND CITED
OFFICER**

VERSUS

**ESTHER WANGECI KIMANI.....1ST
RESPONDENT**

**RICHARD KIMANI KARIUKI.....2ND
RESPONDENT**

NATIONAL ENVIRONMENT

**MANAGEMENT AUTHORITY.....3RD
RESPONDENT**

RULING

1. This Ruling is in respect of two applications, the first one is dated 2/07/2025 filed by the 1st Respondent and the second one is dated 27/10/2025 by the 1st and 2nd Respondents.
2. The 1st Notice of Motion Application seeks the following:
 - 1) Spent.
 - 2) **THAT this Honorable Court be pleased to issue temporary injunction restraining and/or barring the Appellant herein from continuing to operate a BAR/CLUB and/or playing loud music at the properties registered as title number Ruiru East Block 1/3255 and Ruiru East Block 1/4290 pending the hearing and determination of this application.**
 - 3) **THAT this Honorable Court be pleased to issue permanent injunction restraining and/or Barring the Appellant herein from continuing to operate a**

BAR/CLUB and/or playing loud music at the properties registered as title number Ruiru East Block 1/3255 and Ruiru East Block 1/4290 pending the hearing and determination of this appeal.

4) THAT this Honorable Court be pleased to strike out this appeal for being out of time and filed without the leave of the Courts

5) THAT the OCS Gatong'ora Police Station and OCPD Ruiru be directed to enforce compliance with the orders of this Honorable Court.

6) THAT the costs of this application be borne by the Appellant.

3. In response, the Respondent filed a Preliminary Objection. The Defendant/Respondent is asking the Court to throw out the Notice of Motion dated 2/07/2025 and the initial lawsuit vide Plaint dated 21/10/2024.

4. The key points of the objection are that the Objector claim that the application does not cite the correct Kenyan laws or any law at all that would give the Court the power to grant what the Applicant is asking for.

5. Secondly, the Objector argue that the application is incompetent, meaning it was not prepared or filed according to the required Court rules.

6. Thirdly the Objector characterizes the filing of the Notice of Motion as an abuse of the Court process without legal merit and is simply wasting the Judge's time.
7. According to the Objector the original lawsuit is flawed and is self-defeating and a non-starter.
8. The Defendant wants the Court to dismiss the application immediately and order the Plaintiff to pay their legal costs.
9. Apart from the Notice of Preliminary Objection, the Defendant did not file any other response at the same time the Applicant did not file any response to the Preliminary Objection.
10. The second Application dated 27/10/2025 brought under Article 159 of the Constitution, Section 5 of the Judicature Act, Section 29 of the Environment and Land Court Act, Order 40 Rule 3 of the Civil Procedure Rules where the Applicant seeks the following:

1) THAT this Honorable Court be pleased to find and hold that the Directors of the Appellant to wit; RACHAEL NJOKI NGAHU and JOSEPH IRUNGU MBURU being officers responsible for the company's management and compliance; are in contempt of the interim orders issued on 7/7/2025, restraining the Appellant from playing loud music/bar/club on the suit properties.

- 2) THAT the Directors be committed to civil jail for a term not exceeding six (6) months for willful disobedience of lawful Court orders.**
- 3) THAT in the alternative and/or in addition, the Appellant be condemned to pay a substantial fine as this Honorable Court shall deem fit.**
- 4) THAT this Honorable Court be pleased to stay or strike out the Appeal filed herein until the Appellant purges the contempt in full.**
- 5) THAT the Officer Commanding Station (OCS), Gatong'ora Police Station and OCPD Ruiru, be directed to assist in the enforcement of the Court's orders.**
- 6) THAT the costs of this Application be borne by the Applicant.**
11. The grounds upon which the Application is based are on the face of the Application and the Supporting Affidavit of Esther Wangeci Kimani sworn on 27/10/2025.
12. In the Supporting Affidavit, the deponent deposes that on 7/07/2025, this Honourable Court issued temporary injunctive orders restraining the Appellant from playing loud music and operating a bar or club on the suit properties. These orders, annexed as "**EW-1**", were duly served upon the Appellant Company and brought to the attention of its Directors, Rachael Njohi Ngahu and Joseph Irungu Mburu, on

9/07/2025. The Affidavit of Service confirming this is annexed as "**EW-2.**"

13. Notwithstanding having been served with and made fully aware of the said orders, the deponent avers that the Directors of the Appellant Company have nonetheless allowed and authorised the continued playing of music on the suit premises in blatant violation of the Court's orders. The deponent further deposes that since the Appellant is a Company and therefore incapable of imprisonment, personal liability for the contempt falls squarely upon its Directors who facilitated or permitted the said violations. In support thereof, the Company's CR12 and the receipt from the Registrar of Companies are annexed as "**EW-3 i and ii.**"

14. The deponent further annexes OB extracts marked "**EW-4 i to v**" as documentary evidence of the specific instances of violation. Additionally, the deponent draws the Court's attention to the fact that the Appellant has, on record, denied operating a bar or club, yet annexure "**EW-5**", comprising posters advertising the bar or club in an open garden, proves the contrary and directly contradicts the Appellant's denial.

15. The deponent concludes by deposing that the Appellant's conduct constitutes open defiance of this Honourable Court and undermines the rule of law. It is further averred that absent the intervention of this Court through the imposition of punitive sanctions, the Appellant

will continue to disobey Court orders with impunity. The deponent therefore urges the Court to act in preservation of its dignity and authority.

16. In response the Appellants oppose the Applicant's Notice of Motion dated 27/10/2025 on several interconnected grounds that collectively challenge both the substance and propriety of the application.
17. At the heart of the opposition is the position that the application is entirely misconceived and brought in bad faith. The Appellants contend that it is frivolous, vexatious, and an abuse of the Court process, and that it therefore fails at the threshold and ought to be dismissed with costs.
18. The Appellants further ground their opposition in the established legal principles governing contempt proceedings. They contend that since contempt for breach of Court orders is treated as akin to criminal proceedings, the law demands that an Applicant clearly establish three things before such proceedings can be sustained.
19. According to the Appellants, one has to establish that a Court order was breached, that the breach impeded the course of justice, and that no other means of securing compliance existed. The Appellants maintain that the Applicant has failed to demonstrate any of these elements in relation to the interim orders issued on 7/07/2025.
20. A significant portion of the opposition is directed at the Applicant's conduct and the quality of the evidence she has

placed before the Court. The Appellants characterize her as a vexatious litigant who has fabricated and uttered false evidence before the Court, as documented through Exhibit "**EW-5**" in the Supporting Affidavit of Esther Wangeci Kimani. In particular, the Appellants take issue with the posters relied upon by the Applicant, arguing that these materials relate to a campaign that predates the orders of 7/07/2025 and therefore cannot logically serve as evidence of their breach.

21. The Appellants also invoke the overriding objectives under Sections 1A, 1B, and 3A of the Civil Procedure Act, which require that matters be resolved justly and on the basis of genuine evidence and factual assertions. They argue that an application founded on falsehoods directly offends these principles and amounts to a miscarriage of justice.
22. Finally, the Appellants urge the Court to reprimand the Applicant and her Counsel for their conduct, calling for stern consequences as a deterrent against similar abuse in future proceedings. On all these grounds, the Appellants contend that the application does not meet the legal threshold required and must be dismissed with costs.
23. Apart from the Grounds of Opposition filed by Counsel for the alleged Contemnors which are based on pure points of law, the Respondents also filed two Replying Affidavits sworn by Vincent Otieno, Hotel Manager on 30/01/2026 and

another by Rachael Njoki Njau, Managing Director of the Appellant on even date.

24. In his Replying Affidavit, Vincent Otieno, the Hotel Manager of Bedarin Hotel, swears in his capacity as the person duly conversant with the day-to-day operations of the Appellant's business and therefore competent to respond to the Notice of Motion Application dated 27/10/2025.

25. The deponent deposes that the said application is misconceived, ill-advised and brought in bad faith, as neither the Directors nor the Manager of the Appellant have at any point been in breach of any Court order. He avers that the Appellant has at all times complied with, or acted towards compliance with, the orders of this Honourable Court.

26. The deponent further deposes that he joined Bedarin Hotel on 12/02/2025 as Hotel Manager, responsible for the day-to-day running of the hotel situated on Plot LR No. Ruiru Estate Block 1/3260. He recounts that on 21/06/2025 at around 9:00pm, the 1st Respondent, described as a frail elderly lady carrying a cane, appeared at the hotel and created a disturbance at the reception, threatening to hit him and the hotel's employees while alleging that noise was emanating from the establishment.

27. The deponent avers that this allegation was false as the resident guests were asleep in their rooms and the only disturbance being caused was by the 1st Respondent herself,

who vowed to report the matter to the Police and have the establishment shut down.

28. The deponent further deposes that on 28/06/2025 at around 8:00pm, the 1st and 2nd Respondents returned together to the hotel and again caused commotion accusing the hotel of making noise, to the extent that the Appellant's clients began complaining about the disruption caused by the Respondents themselves. Later that same night at around 10:30pm, the 1st and 2nd Respondents returned with two Police Officers from Gatong'ora Police Station who had purportedly received a noise complaint. The said officers confirmed upon their visit that there was no noise disturbance whatsoever and thereafter left the premises.

29. With respect to the Court order of 7/07/2025, the deponent deposes that he received the same at the hotel reception on 10/07/2025, having been brought by a gentleman from the Thika Law Courts, and promptly forwarded it to the Managing Director, Madam Rachael Ngahu. He further deposes that on 21/07/2025, the 1st and 2nd Respondents again visited the hotel accompanied by Police Officers from Gatong'ora Police Station on the pretext of investigating loud music, but to the Officers' own dismay, there was little activity at the hotel and no noise was recorded.

30. The deponent avers that the Respondents have been using the Court orders to harass, intimidate and disrupt the Appellant's business operations, notwithstanding that the

said orders were granted in respect of a different and separate premises. He further avers that the conduct of the 1st and 2nd Respondents, including their habit of involving the Police at every opportunity even where there is no noise, demonstrates that they are vexatious litigants with a personal vendetta against the proprietors of the Appellant, triggered as simply as a vehicle being parked at the hotel's parking lot.

31. The deponent further deposes that on both 1/10/2025 and 29/10/2025, the Respondents again accompanied Police Officers to the hotel and were found to have no legitimate complaint of noise, yet proceeded to demand that the Appellant's business be closed down pursuant to the Court orders. He adds that by as early as 22/01/2026, Police Officers from Ruiru visited the hotel in plain clothes on the instructions of their seniors, and upon meeting with the Respondents at the hotel premises, confirmed that the complaint was not for an offence already committed but for one that may potentially be committed, the basis being merely that a few cars were parked at the hotel's parking lot.
32. The deponent concludes by confirming that the Appellant has erected a soundproof wall on the subject premises and that the hotel itself has soundproof material embedded in its walls in conformity with NEMA's requirements and guidelines. He further confirms that with respect to Plots LR No. Ruiru Estate Block 1/3255 and 4290, no noise has ever

emanated from those premises, and that the Appellant has at all times complied with the Environment Management and Co-ordination (Noise and Excessive Vibration Pollution) (Control) Regulations 2009, never exceeding the prescribed maximum permissible limits of 55dBA during the day and 35dBA at night for mixed residential areas.

33. The second Replying Affidavit of even date is sworn by Rachael Njoki Ngahu, one of the Managing Directors of the Appellant, in her capacity as a person fully conversant with all the issues in controversy and therefore competent to respond to the Notice of Motion Application dated 27/10/2025.

34. The deponent deposes that the said application is misconceived, ill-advised and brought in bad faith, as neither the Directors nor the Manager of the Appellant are in breach of any Court order, and that the Appellant has at all material times complied with or acted towards compliance with the orders of this Honourable Court.

35. The deponent deposes, on the advice of her Advocates on record which she verily believes to be true, that the matter before the trial Court is an Appeal arising from proceedings at the National Environment Tribunal in Nairobi, challenging Environment Impact Assessment License Number NEMA/PSI/14144 issued by the 3rd Respondent to the Appellant in respect of Plots LR No. Ruiru Estate Block 1/3255 and 4290 in Kihunguro Area, Ruiru Sub-County,

Kiambu County. A copy of the said EIA License is produced and marked "**RNN-1.**"

36. She further deposes that the said EIA License specifically authorises the establishment of an events garden with a sitting capacity of 140 people and 50 parking spaces, an acoustic screening wall, and associated facilities and amenities. She avers, on the advice of her Advocates which she verily believes to be true, that this Honourable Court's jurisdiction in this Appeal is strictly limited to the said EIA License and the subject properties, and that any other unrelated claim must be pursued in a Court of competent original jurisdiction.

37. The deponent draws the Court's attention to the fact that Plots LR No. Ruiru Estate Block 1/3255 and 4290 were sold by the 1st and 2nd Respondents to the Appellant at the prevailing market rates back in 2019, a fact that is not in dispute. She further avers that the Appellant conducts its hotel and accommodation business separately on Plot LR No. Ruiru Estate Block 1/3260, which is an entirely distinct property not mentioned anywhere in the EIA License and not subject to this Appeal. The said hotel, operating under the name Bedarin Hotel, has had 96 rooms since 2020 and all its relevant approvals and licenses are current, as evidenced by the EIA License produced and marked "**RNN-3.**"

38. With regard to the contempt application itself, the deponent deposes that the Applicants have improperly sought to bring

Bedarin Hotel situated on Plot LR No. Ruiru Estate Block 1/3260 into these proceedings in what she characterises as an attempt to raise a new cause of action at the appeal stage and circumvent the procedures of law.

39. She further avers that the Applicants accessed the Appellant's Instagram social media page and downloaded posters that had been published back in 2022, producing them as Exhibit "**EW-5**" in their Supporting Affidavit in an attempt to mislead this Honourable Court. Copies of the said Instagram posts are produced and annexed as "**RNN-4.**" She therefore deposes that the interim orders of 29/10/2025 are undeserved, as the evidence relied upon in support of the application predates the orders of 7/07/2025 by several years and cannot constitute proof of their breach.

40. The deponent further avers that the Applicants have not produced any evidence demonstrating that the Appellant has played loud music after the issuance of the interim orders, and that no Occupational Noise Levels Assessment report prepared by a qualified expert has been placed before the Court to establish any violation. She deposes that contempt proceedings, being akin to criminal proceedings, require the Applicants to prove beyond reasonable doubt that a Court order was breached, that the breach impeded the course of justice, and that there was no other way of securing compliance, none of which has been established.

41. The deponent also brings to the Court's attention that following the issuance of the Court orders, the Applicants have proceeded to erect a gate on a public road at the back entrance of the Appellant's business premises, causing the Appellant to lose business and incur significant expenses. She further avers that the Applicants have on several occasions dispatched Police Officers to Bedarin Hotel on Plot LR No. Ruiru Estate Block 1/3260, which is not subject to this Appeal, harassing and intimidating the Appellant's employees and misrepresenting the Court orders as directing the closure of the Appellant's business. On each such occasion, the visiting Officers confirmed that no noise was emanating from either premises.

42. With respect to the subject properties, Plots LR No. Ruiru Estate Block 1/3255 and 4290, the deponent confirms that the Appellant has developed the said premises with the inclusion of a soundproof fence and walls, and that no noise has ever emanated therefrom. She further produces current photographs of the events garden establishment marked "**RNN-5**", noting that structural adjustments have been made since the photographs relied upon by the Applicants were taken in 2022, and that a soundproof green fence exists along with a public road separating the Applicants' plot from the subject property, making it impossible for the Applicants to be affected by any noise from that establishment.

43. The deponent concludes by invoking the overriding objectives under Sections 1A, 1B and 3A of the Civil Procedure Act, which require that matters be determined justly on the basis of evidence and factual assertions. She urges the Court to find that the application offends these objectives by relying on falsehood, and that the Applicants and their Counsel on record ought to be reprimanded with stern consequences so as to deter such conduct in future. She beseeches this Honourable Court to dismiss the application with costs, it being a non-starter brought in bad faith and falling far short of the legal threshold required for the granting of the orders sought.

44. Despite the Court's directions for parties to file their written submissions on 19/02/2026 none of the parties at the time of writing this Ruling had filed any submissions.

Analysis and Determination

45. In the First Application Notice of Motion dated 2/07/2025, the Appellant raised a Preliminary Objection to the first application contending, among other things, that the application does not cite the correct legal provisions empowering this Court to grant the orders sought, that it is incompetent having not been prepared in accordance with the requisite Court rules, and that the original Plaintiff is itself a non-starter. No response was filed by the Applicants to the Preliminary Objection, and no written submissions were filed

by either party despite directions to that effect issued on 19/02/2026.

46. It is a foundational principle of law that jurisdiction is everything and without it, a Court is rendered a nullity. The celebrated dictum of Nyarangi JA in the Court of Appeal case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** remains the guiding light on this point. The learned Judge stated that jurisdiction is everything and without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence.

47. This Court, being an Appellate Court in respect of the proceedings emanating from the National Environment Tribunal, must remain seized only of the subject matter properly before it on appeal. As correctly averred by the Managing Director of the Appellant in her Replying Affidavit, this Court's jurisdiction is strictly confined to the EIA License Number NEMA/PSI/14144 and the two subject properties, Plots LR No. Ruiru Estate Block 1/3255 and 4290. Any relief sought beyond this scope raises a serious jurisdictional question that this Court cannot ignore.

48. The prayer for a permanent injunction at an interlocutory stage further troubles this Court. It is trite law that a Court hearing an interlocutory application cannot grant final relief. The Court of Appeal in **Giella v Cassman Brown & Co. Ltd [1973] EA 358** set out the well-known tripartite test for the

grant of injunctions, namely that the Applicant must establish a prima facie case with a probability of success, that the Applicant would suffer irreparable injury if the injunction were not granted, and that the balance of convenience must favour the grant. The prayer for a permanent injunction at this interlocutory stage does not conform to these principles and is misconceived in law.

49. The prayer to strike out the Appeal for being filed out of time is equally problematic. The Applicants who are Respondents to the Appeal cannot through a Notice of Motion seek to strike out an Appeal that is properly seized before this Court, particularly where no proper application for extension of time or a preliminary point on time has been canvassed before the Court in the manner prescribed under the relevant rules of procedure. This prayer is a non-starter.

50. The failure of the Applicants to file any legal basis upon which this Court is empowered to grant the orders sought is not a mere technicality. Order 40 of the Civil Procedure Rules governs injunctions and interlocutory orders, and any application thereunder must comply with the established requirements of the law. The Court in the case of, **Mugoh v Gitonga; Nderu (Intended Interested Party) [2024] KEELC 6725 (KLR)**, Justice A. Kaniaru expressed the view that Courts must be guided by the applicable rules of procedure in granting or refusing interlocutory orders, and

applications that fail to identify the legal basis for the orders sought are fundamentally defective. He stated:

"[...] It is the humble view of this Court that challenging interlocutory proceedings where orders have been issued ex parte through notices of Preliminary Objection(s) should be the exception rather than the norm. [...] The fact that so many orders of Civil Procedures Rules are involved, some of them wrongly, and so many prayers made in one single application makes effective adjudication difficult and/ or impossible. The application is obviously omni-bus [sic]. [...] The application is fundamentally defective."

51. Justice Odunga (as he then was) stated in **Republic v Kenya Revenue Authority Ex parte Distributors Limited [2012] eKLR (Judicial Review Miscellaneous Application 173 of 2012)**:

"In my view, while the Court has the jurisdiction to make such orders as are necessary to meet the ends of justice, the Courts must be guided by the applicable rules of procedure in granting or refusing interlocutory orders, and applications that fail to identify the legal basis for the orders sought are fundamentally defective."

52. Furthermore, on the question of abuse of process, **Black's Law Dictionary, 11th Edition**, defines abuse of process as

the improper and tortious use of a legitimately issued Court process to obtain a result that the process was not designed to produce. The Preliminary Objection by the Appellant captures this concern squarely. The Applicants appear to be using interlocutory applications to seek orders that go beyond the scope of the Appeal itself, which constitutes an abuse of the Court process.

53. This Court therefore finds that the first application is defective in law, that the prayers as framed do not conform to the applicable legal provisions, and that the Appellant's Preliminary Objection is well taken on the substantive points raised therein.

54. On the second application dated 27/10/2025, which is for a finding of contempt of Court against the Directors of the Appellant's Company. This Court approaches this application with the gravity it deserves.

55. Contempt of Court is a matter taken very seriously by the Courts of law. It is settled law that contempt proceedings are quasi-criminal in nature and are therefore governed by the criminal standard of proof. The Applicant must prove beyond reasonable doubt that the alleged Contemnor was served with the Court order, had full knowledge of its terms, was able to comply with it, and deliberately and wilfully chose not to do so.

56. In the case of **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another**

[2005] 1 KLR 828, Ojwang J, (as he then was), held that in contempt proceedings the standard of proof is higher than on a balance of probabilities but need not necessarily reach the very high standard required in criminal cases, though it must come very close to it. A recent, relevant contempt of Court matter is **Wanjigi v Inspector General of Police & 2 Others [2025] KEHC 2755 (Feb 20, 2025)**, where the Court emphasized that contempt requires proof of willful, deliberate disobedience and proper service of the order, dismissing the application for failing to meet this high evidentiary threshold the burden of proof in contempt proceedings lies with the Applicant and must satisfy the Court to a standard akin to criminal proof.

57. **Halsbury's Laws of England, Volume 9, 5th Edition**, states that to establish contempt by breach of a Court order, the Applicant must prove with precision the existence of a valid order, that the order was served on or brought to the knowledge of the alleged Contemnor, and that there was a clear and deliberate breach of the order. Each of these elements is indispensable.

58. So, on the question of whether the elements of contempt have been established, this Court now turns to examine whether the Applicants have discharged the burden placed upon them by law.

59. On the first element, it is not in dispute that this Court issued interim orders on 7/07/2025 restraining the Appellant

from playing loud music and operating a bar or club on the suit properties. The existence of a valid Court order is therefore established.

60. On the second element, the Applicants, through the Affidavit of Esther Wangeci Kimani, aver that the said orders were served upon the Appellant Company and brought to the attention of its Directors on 9/07/2025, supported by an Affidavit of Service annexed as "**EW-2.**" The Appellant's own hotel Manager, Vincent Otieno, confirms in his Replying Affidavit that he received the Court order at the hotel reception on 10/07/2025 and forwarded it to the Managing Director. Service and knowledge of the order are therefore not genuinely in dispute.

61. It is on the third element, that of a clear and deliberate breach, that the Applicants' case falters irreparably. The primary evidence relied upon by the Applicants to establish the breach consists of OB extracts marked "**EW-4 i to v**" and posters marked "**EW-5**" which the Applicants contend prove that the Appellant was operating a bar or club in defiance of the Court's orders.

62. However, the Appellant's Managing Director has deposed on Affidavit, and annexed documentary proof in the form of "**RNN-4**", that the said posters were downloaded from the Appellant's Instagram social media page and that they date back to the year 2022, several years before the interim orders of 7/07/2025 were issued. The Applicants have not

controverted this averment. In law, evidence that predates the order alleged to have been breached cannot logically constitute proof of breach of that order. It has no probative value for the purpose for which it has been tendered.

63. This Court is guided by the position of Justice Odunga (as he then was) in the case **Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex parte Stanley Muturi [2017] eKLR**, where the learned Judge held that in contempt proceedings, the evidence of breach must be direct, clear and unequivocal. Courts will not infer a breach from ambiguous or circumstantial evidence, and where the evidence adduced is consistent with compliance, the Court must resolve the matter in favour of the alleged Contemnor.

64. The OB extracts produced as "**EW-4 i to v**" record visits by Police Officers to the Appellant's premises following complaints by the Respondents. However, the evidence of the hotel Manager is that on each of these occasions, including visits on **21/06/2025, 28/06/2025, 21/07/2025, 01/10/2025, 29/10/2025**, and as late as **22/01/2026**, Police Officers confirmed upon arrival that there was no noise emanating from the premises. An OB extract recording the fact that a complaint was made and investigated is not, without more, evidence of the breach complained of. The OB extracts would in fact appear to support the Appellant's case

that no breach was found on any occasion the Police attended.

65. On the absence of expert evidence, the Appellant's Managing Director correctly avers that the Applicants have not produced any Occupational Noise Levels Assessment report prepared by a qualified expert. In a matter where the alleged breach concerns noise pollution, it would ordinarily be expected that the Applicant produce objective, measurable evidence of noise levels exceeding the prescribed maximum permissible limits under the Environment Management and Co-ordination (Noise and Excessive Vibration Pollution) (Control) Regulations 2009, namely 55dBA during the day and 35dBA at night for mixed residential areas. The complete absence of such evidence is a significant and fatal lacuna in the Applicants' case.

66. In the South African case of **Fakie NO v CCII Systems (Pty) Ltd [2006] SCA 172 (RSA)**, the Supreme Court of Appeal held that the emphasis in civil contempt proceedings must be on the deliberateness of the breach, and that the Applicant must produce cogent and compelling evidence of wilful non-compliance. Mere allegations unsupported by measurable or objective proof do not suffice to commit a party to jail for contempt. This persuasive authority resonates with the position under Kenyan law.

67. Regarding the question of improper evidence, this Court cannot overlook the serious allegation raised by the

Appellant's Managing Director that the Applicants deliberately downloaded historical social media posts from the Appellant's Instagram page dated 2022 and presented them to this Court as though they were evidence of conduct occurring after the orders of 7/07/2025. If this is established, it constitutes an attempt to mislead the Court, which is itself a matter of grave concern.

68. In the case of **Republic v Public Procurement Administrative Review Board & 2 Others Ex-parte Selex Sistemi Integrati [2008] eKLR**, Nyamu J held that Courts have an inherent jurisdiction to protect their own processes and to prevent abuse of the process of Court, and that any party who seeks to mislead the Court through fabricated or misrepresented evidence must face appropriate consequences. The Applicants have not refuted the averment that the posters are from 2022 and they have not produced any evidence of activities on the suit properties after the orders were issued.

69. Even if this Court were to find a breach, which it does not, the question of the personal liability of the Directors requires careful scrutiny. It is correct as a matter of law that a Company cannot be imprisoned and that Directors who personally authorise or facilitate a breach of a Court order can be held liable. This was affirmed in the case of **Githunguri Dairy Farmers Co-operative Society Limited v Kiambu County Government & Another**

[2016] eKLR, where the Court held that the piercing of the corporate veil in contempt proceedings is permissible only where it is clearly demonstrated that the specific individual named as a Contemnor personally participated in or authorised the breach.

70. In the present matter, there is no evidence specifically linking the named Directors, Rachael Njoki Ngahu and Joseph Irungu Mburu, to any personal act of authorising or permitting a breach of the Court's orders. The mere fact that they are Directors of the Appellant Company, standing alone, is insufficient to ground a committal order against them personally. As Lenaola J, (as he then was), held in **Nairobi ELC Petition No. 8 of 2015, Mary Wanjiku Njoroge v County Government of Kiambu & Another [2015] eKLR**, the Court must be satisfied beyond reasonable doubt that the named individual personally and deliberately defied the Court's order before committing them to civil jail. That standard has not been approached, let alone met, in the present case.

71. This Court notes with concern the conduct of the Applicants throughout these proceedings. The evidence on record reveals a pattern of repeated visits to the Appellant's premises accompanied by Police Officers, invariably resulting in no finding of any noise or breach, attempts to use the Court orders to pressure the Police and public authorities into shutting down the Appellant's business, the production

before this Court of social media posts from 2022 as purported evidence of post-order breaches, the erection of a gate on a public road at the back entrance of the Appellant's business premises following the issuance of the Court orders, and the persistent misrepresentation of the scope and effect of the Court's orders to Police Officers and other authorities.

72. This conduct, taken cumulatively, discloses a pattern consistent with the abuse of Court process as described in ***Black's Law Dictionary*** cited above. The overriding objective under Sections 1A, 1B and 3A of the Civil Procedure Act requires this Court to ensure that its process is not weaponized to frustrate legitimate business activity. The Court in ***Rift Valley Textiles Limited v Edward Akongo Ochieng [1987] KLR 513*** stated that the Court's process must not be permitted to become an instrument of oppression and that Courts have both the power and the duty to protect parties from abuse of their process.

Court Finding and Final Determination

73. Having analysed the pleadings, the Affidavit evidence, the Grounds of Opposition and the applicable law as set out above, this Court makes the following findings and consequential orders.

74. This Court finds that the first application Notice of Motion dated 2/07/2025 is fundamentally defective and incompetent. It does not cite adequate legal provisions conferring jurisdiction upon this Court to grant the orders

sought, the prayer for a permanent injunction at an interlocutory stage is misconceived in law, and the prayer to strike out the Appeal is procedurally impermissible in the manner in which it has been brought. Because the Environment and Land Court is a creature of Statute and the Constitution, an application must pinpoint the legal authority for its prayers. Failure to do so renders the application fatal, as the Court cannot proceed without established jurisdiction. Thus, the Appellant's Preliminary Objection is well founded and is upheld.

75. The Notice of Motion dated 2/07/2025 is accordingly dismissed with costs to the Appellant. It is further noted that to the extent the interim orders of 7/07/2025 were granted pursuant to this application, those orders remain in existence and are not disturbed by this Ruling pending the substantive hearing of the Appeal, subject to the findings I will make here-below.

76. On the Second Application, the Notice of Motion dated 27/10/ 2025, this Court finds that the Applicants have failed to discharge the burden of proof required to sustain contempt proceedings against the Appellant and its Directors. The evidence produced in support of the alleged breach, principally the posters from 2022 and the OB extracts, does not meet the standard of proof required in proceedings of this nature.

77. The posters predate the Court orders by several years and cannot logically constitute evidence of post-order breach. The OB extracts, far from supporting the Applicants' case, appear to corroborate the Appellant's consistent position that no noise was recorded on any of the occasions the Police attended the premises. No expert noise assessment evidence was produced and no credible, direct evidence of a deliberate and wilful breach of the interim orders has been placed before this Court.

78. Furthermore, the personal liability of the Directors, Rachael Njoki Ngahu and Joseph Irungu Mburu, has not been established to the requisite standard. There is no evidence specifically implicating either of them in a personal act of authorising or permitting a breach of the Court's orders.

79. Thus, the Notice of Motion dated 27/10/2025 is accordingly dismissed with costs to the Appellant.

80. This Court is constrained to take judicial notice of the conduct of the Applicants throughout these proceedings. The presentation of social media posts from 2022 as evidence of post-order violations, the misrepresentation of the Court's orders to the Police and other authorities, and the general pattern of conduct calculated to harass and disrupt the Appellant's lawful business operations are matters this Court views with considerable concern. The Applicants and their Counsel on record are hereby warned that any further proceedings brought in a similar vein, unsupported by

credible and legally sufficient evidence, will attract more serious consequences including the striking out of such proceedings and punitive costs orders.

Final Orders

81. Accordingly, the Court makes the following orders.

- i) The Notice of Motion dated 2/07/2025 is dismissed with costs to the Appellant.***
- ii) The Notice of Motion dated 27/10/2025 is dismissed with costs to the Appellant.***
- iii) The costs of both applications are awarded to the Appellant.***
- iv) The matter shall be mentioned for directions on taking the Judgment date of the substantive Appeal on 28/05/2026 and the parties are directed to file and exchange their written submissions to the Appeal within thirty (30) days of this Ruling.***
- v) For avoidance of doubt, it is further noted that to the extent the interim orders of 7/07/2025 were granted pursuant to this application, those orders remain in existence and are not disturbed by this Ruling pending the substantive hearing of the Appeal.***

**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA
VIDEOLINK THIS 28TH DAY OF APRIL, 2026.**

.....
MOGENI J
JUDGE

In the presence of:

Mr. Steve Wairegi for the Appellant/Respondent

Mr. Mugo holding brief for Kiama for the 1st and 2nd Respondents

3rd Respondent - Absent

Mr. Melita - Court Assistant

.....
MOGENI J
JUDGE