



Eagle Palace Hotel v County Government of Nakuru & another (Environment and Land Case E065 of 2024) [2025] KEELC 5778 (KLR) (1 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5778 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E065 OF 2024**

**A OMBWAYO, J
AUGUST 1, 2025**

BETWEEN

EAGLE PALACE HOTEL APPLICANT

AND

COUNTY GOVERNMENT OF NAKURU 1ST RESPONDENT

CHILIS TAVERN LTD 2ND RESPONDENT

RULING

1. Chilis Tavern Ltd hereinafter referred to as the applicant has come to this court against National Environmental Management Authority Nakuru, hereinafter referred to as the respondent seeking an Order directing the Respondent to inspect Chilis Tavern located along Oginga Odinga Road, Nakuru town and to submit a report on its compliance with Court's Orders in *ELCLC No. E065 of 2024: Eagle Palace Hotel Chilis Tavern Limited & County Government of Nakuru* and the requirements of the *Environmental Management and Co-ordination (Excessive Noise and vibrations Pollution Control) Regulations, 2009*, within Fourteen (14) days from the date of making this Order. Costs of the application be in the cause.
2. The applications is based on grounds that on 20th September 2024, the 1st Interested Party instituted a suit against the County Government of Nakuru together with an application seeking inter alia Orders that the Applicant be compelled to install noise mitigation measures including reducing the volume of music or installing sound proofing within its establishment.
3. The application was heard and on 16th January, 2025, the Court made an Order directing the Applicant to install noise mitigation measures including reducing the volume of music or installing sound proof within the establishment and to file an expert report within Fourteen (14) days.
4. In compliance with the Order; the Applicant installed sound barrier and sound proofing materials all around the establishment. On 7th February, 2025, the Respondent's officials carried out an inspection



- of the establishment to ascertain the level of improvements made towards complying with the requirements of the *Environmental Management and Co-ordination (Excessive Noise. and Vibrations Pollution Control) Regulations, 2009*.
5. From the inspection, it was confirmed that sound barriers had been installed along the entire stretch of the facility on the side facing Mburu Gichua toad, sound proofing materials have been installed on a large extent on the facility on the side facing Mburu Gichua toad and all the speakers within the facility had been repositioned to face inwards.
 6. Following the inspection, the Respondent' Officials recommended that the Applicant extends the
 7. sound barriers installed to include at least an additional 4M on the side facing Oginga Odinga Road excluding the packing and extend the sound proofing materials to cover the remaining area on the side facing Mburu Gichua road. The Applicant complied with the recommendations and requested the 2nd Defendant to carry out a further inspection with no avail. On 27th February, 2025, the matter came up for a Mention to confirm filing of the report. The Applicant informed Court that it was yet to file the report and requested for more time. Following various verbal requests with no positive response, the Applicant wrote to the Respondent on 19th 2025, requesting it to visit the establishment to conduct a further inspection to assess compliance with the recommendations and to write an expert report further to its report of 7th February, 2025 of the Applicant's compliance with. the Court Orders and the requirements of the *Environmental Management and Co-ordination (Excessive Noise and Vibrations Pollution Control Regulations, 2009*. The Respondent has yet to respond to the Applicant's letter to till date and efforts to get an inspector to visit the Applicants premises have proved futile. The leave granted by Court to the Applicant to file the report has lapsed.
 8. The matter was scheduled for hearing of the main suit on 29th July, 2025. The Applicant is yet to file the report. The report is paramount as it will demonstrate to the Honorable Court the Applicant's compliance with not only the Court Orders but also the requirements of the *Environmental Management and Co-ordination (Excessive Noise and vibrations Pollution Control) Regulations, 2009*. It has installed sound proofing and noise mitigation measures all around the establishment.
 9. The Applicant is apprehensive that if the matter proceeds for hearing without the further inspection done and report filed in Court, it will be greatly prejudiced as the Court may hold it in contempt and declare it non-compliant yet it has complied with Court Orders and the requirements of the *Environmental Management and Coordination (Excessive Noise and Vibrations Pollution Control) Regulations, 2009*.
 10. Unless this Court intervenes and grants the Orders sought, hearing of this matter will proceed and the Applicant will be condemned unheard on its compliance rendering the application and suit herein nugatory hence the urgency. In view of the foregoing it is in the interest of justice and fairness that the Orders prayed for are granted.
 11. The applications is supported by the affidavit of Daniel Moge Maina who operates the lounge business in the name of Chiris Tavern located along Oginga Odinga Road Nakuru town. The applicant reiterates the grounds of the application in the supporting affidavit. The applications was consolidated with *Nakuru ELC E065 of 2024* and NEMA was enjoined as a party.
 12. M/s Mumbi, learned counsel submits that the orders were that the applicant to install noise reduction gadgets at his premises. The applicant has complied with the order of the court. The respondent National Environmental Management Authority was informed but has not complied. The respondent is a state organ and should ensure that the environment is not degraded. Regulation 6 gives the responsibility of regulating notice to the County Government.



13. Mr Akango learned counsel for the Eagle Palace Hotel submits that this application has no merit. The same should be dismissed for reasons that the control of noise pollution is a devolved function of County. County government are responsible for regulating Noise pollution. National Environmental Management Authority is a National Government Agency. National Environmental Management Authority had a wide mandate of exercising constitutional duty. When functions are devolved they should be left to the organ. The principle of subsidiarity should apply. The body that is better placed is the County Government.
14. I have considered the application and do find that NEMA under section 9(2) of *Environment Management and Co-ordination Act* no 8 of 1999 has the power to carry out the inspection sought by the applicant. The import of this section is that National Environmental Management Authority can
15. Act through lead agencies or act on its own or in conjunction with other lead agencies. National Environmental Management Authority is established under section 7 of the *Environment Management and Co-ordination Act* no 8 of 1999 to ensure sustainable management of the environment through exercising general supervision and coordination over matters relating to the environment and to be the principal organ of government in the implementation of all policies relating to the environment. Under this provision the National Environmental Management Authority has the power to Inspect premises that have been alleged to be producing excessive noise and report to court.
16. This court find that the application is merited and is granted; thus, National Environmental Management Authority is directed to inspect Chilis Tavern located along Oginga Odinga road Nakuru and to submit the report on its compliance with court orders in ELC LC No E065 of 2023 *Eagle Palace, Hotel v Chilis Tavern Ltd & County Government of Nakuru*. The report to be filed in court within 15 days. Costs in the cause. Mention on 25th September 2025

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT**

DATE: 2025-08-01 18:15:04

