



**Kindiki v Christian Foundation Fellowship Church Mpakone through
its registered Trustees & 5 others (Environment & Land Petition
E012 of 2023) [2023] KEELC 21869 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION E012 OF 2023**

CK NZILI, J

NOVEMBER 22, 2023

**IN THE MATTER OF ARTICLES 42, 69 AND 70 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE RIGHT TO A CLEAN AND
HEALTHY ENVIRONMENT UNDER ARTICLE 42 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTION 3 OF THE ENVIRONMENTAL
MANAGEMENT & COORDINATION ACT**

BETWEEN

PROF JONAH N KINDIKI PETITIONER

AND

**CHRISTIAN FOUNDATION FELLOWSHIP CHURCH MPAKONE THROUGH
ITS REGISTERED TRUSTEES 1ST RESPONDENT**

GODFREY KARUMBA ALIAS MUTWIRI 2ND RESPONDENT

COUNTY GOVERNMENT OF MERU 3RD RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 4TH
RESPONDENT**

OFFICER COMMANDING STATION MERU 5TH RESPONDENT

OFFICE OF THE ATTORNEY GENERAL 6TH RESPONDENT



RULING

1. The court by an application dated 1.11.2023 is asked to restrain the 1st & 2nd respondents from playing or continuing with playing very loud music in their church which exceeds the limits of the law from Monday to Sunday, which has adversely affected the petitioner and his family pending hearing and determination of this petition.
2. The grounds re contained on the face of the application and the affidavit of Prof. Jonah N. Kindiki, sworn on 1.11.2023. He has attached an annexure marked JK “2”, a report by the 4th respondent.
3. Briefly the petitioner says he has been a resident of the Kaaga area for 23 years where he has lived in peace until 2021 when the 1st respondent started operating there creating discomfort, a lack of peace due to excessive noise, out of its high voltage preaching, loud music and intercessory sessions. The petitioner avers he has suffered serious obstructions and sound pollution which is enhanced by an electronic amplifying system.
4. Further, the petitioner says he is unable to hold virtual classes or meetings from his house, especially during the evening, night and early morning hours.
5. The petitioner also avers that attempts for intervention have been futile and or been ignored by the 1st & 2nd respondent.
6. The respondent was served with the application and petition on 8, 9th and 17th November 2023, as per the acknowledgment stamps and an affidavit of service by Vivian Loice Aketch advocate and filed on 23.11.2023.
7. The 3rd respondent opposes the petition by a preliminary objection 15.11.2023, on the basis that it offends the doctrine of exhaustion per Regulations 25 & 26 of the *Environment Management & Coordination Act, Noise and Excessive Vibration Pollution Control Regulation* 2009 no lead agency report has been attached. It falls short of precision in a constitutional petition and discloses no cause of action.
8. The 1st & 2nd respondents oppose the appeal by a replying affidavit of Godfrey Mutwiri Karuma sworn on 23.11.2023, on the basis that the petition is full of falsehood and half-truths. He says the allegations are false malicious and actuated by gale for the growth of the church within a short period of time.
9. The 1st & 2nd respondents aver the petitioner is a member and leader of the Methodist Church of Kenya-Kaaga, located a few meters from their church who feels threatened by its growth.
10. The 1st & 2nd respondents admit the petitioner is a resident lecturer and professor at Moi University-Eldoret, who occasionally visits his home in Kaaga where there are other churches.
11. Additionally, the 1st & 2nd respondents say it beats logic what is so special with it operating in the locality where there are other commercial activities in the market.
12. The 1st & 2nd respondents admit the complaint was made against them and were summoned by the government agencies including the 3rd – 5th respondents, as per a letter dated 8.12.2022 marked GM K “4”.
13. They admitted they hold church services on designated days and times.



14. Similarly, the 1st & 2nd respondents deny the allegations and state they are being intimidated by the petitioner through his connections yet he has not provided what law they have breached including the sound decibels, or a scientific report contrary to Article 69 of the Constitution.
15. Articles 43, 69 and 70 of the Constitution relate to rights and obligations to respect and enforce environmental rights on both the state and individuals. Article 42 thereof grants every person a right to a clean and healthy environment including the protection of the environment for present and future generations.
16. In the petition before this court the petitioner averred the mandate to protect the environment by the 4th respondent was invoked. Paragraphs 9 – 16 of the petition, have set out the particulars of breach, loss and damage occasioned to him and his family and the constitutional provisions which have been breached. The petition is pleaded with permission and meets the Mumo Matemu v Trusted Society of Human Rights Alliance & 5 other (2003) eKLR case law and the Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules 2013 (Mutunga Rules).
17. As to the *locus standi* the petitioner has demonstrated he is directly affected by the alleged breach of his right to environment. I find the petition properly before the court.
18. As to the doctrine of exhaustion, the petitioner has demonstrated he made a complaint to the 4th respondent who prepared a report dated 8.12.2022. The 4th respondent gave recommendations and held it was incapable of granting certain reliefs. This left the applicant with no option but to come to court.
19. There can be no right without a remedy. The petitioner submitted himself to the first port of call which declined to assist him, save for the report. I find the jurisdiction of the court properly invoked after the failure of the National Environment Management Authority to take action under Section 87 of the Environmental Management & Coordination Act.
20. On the questions of interim or conservatory orders, the petition has to meet the requirements set under in Mrao Ltd v First American Bank (2003) KLR 125 and demonstrate that he has a *prima facie case*. He has shown a threatened a right. A report has been made by NEMA.
21. In Joseph Mureithi Gichu v Obuya Otieno Ritzau t/a Bamburi Community High School & 3 others (2017) eKLR, the court said there was a real danger that the appellant would continue to suffer prejudice as a result of a violation of his right to clean and health environment since the law requires preservation of a clean and health environment.
22. In this application, the 1st & 2nd respondents have not denied they have an amplifier in their church and that they are a licensed and registered church. Unfortunately, they have not produced any license from the 4th respondent or public health officer regarding noise and the limits they should not exceed. It is the 1st & 2nd respondents to confirm if they are licensed and have not exceeded the limits set by law by producing their permits. The report by the 4th respondent made a recommendation. The 1st and 2nd respondents have not stated if they took remedial action after the report. Instead of addressing the issue at hand, the 1st & 2nd respondents have addressed extraneous issues unrelated to the complaint before court.
23. The up short is I find the application merited. Prayer No. 3 that an order be and is hereby issued restraining the 1st & 2nd respondents from emitting the excessive loud noise during evening hours and at night and early morning hours on weekdays, Saturdays and Sundays which has adversely affected



the petitioner and his family pending hearing and determination of this application and the petition is allowed to be enforced by the 4th & 5th respondents.

24. Parties to file responses to the petition within 30 days and list it for hearing on priority basis. Mention on 22.1.2024.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 22ND DAY OF NOVEMBER 2023

HON. CK NZILI

ELC JUDGE

In presence of

C.A Kananu/Mukami

Mwirigi for 3rd respondent

Miss Aketch for petitioner

Miss Maina for 5th & 6th respondent

Thangichia for 1st & 2nd respondent

