



Estambale & another v Situma & another (Being Sued as Representatives of Deliverance Church International Simatwet, Gutongoria, Trans Nzoia County) (Environment and Land Miscellaneous Application E003 of 2025) [2025] KEELC 4694 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4694 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2025**

**CK NZILI, J
JUNE 18, 2025**

BETWEEN

BENSON ESTAMBALE 1ST APPLICANT

LINAH OTTICHILO 2ND APPLICANT

AND

REV. JOHN SITUMA 1ST RESPONDENT

REV.JANE SITUMA 2ND RESPONDENT

**BEING SUED AS REPRESENTATIVES OF DELIVERANCE CHURCH
INTERNATIONAL SIMATWET, GUTONGORIA, TRANS NZOIA COUNTY**

RULING

1. Before the court is an application dated 14/1/2025 brought under Article 42 of *the Constitution*, Orders 1 Rules 8(1) and (2), and Order 40 Rules 1, 2, 4, and 8 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Regulations 3, 14 of the Environmental Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations, 2009. The applicants are seeking to have the respondents and their members restrained by an order of temporary injunction from loudly worshipping, praying, singing, playing loud music, and other activities, causing noise pollution beyond the legal limits of 60 dB.
2. The applicants also seek an order from the Director of Environment, Natural Resources and Climate Change, County Government of Trans Nzoia, to furnish a report on compliance with the orders and the OCS Sirende Police Station to also ensure compliance and enforcement of the court orders.
3. The grounds are that the applicants have been residents of Gutongorio B Sirende Ward, on Title Numbers Waitaluk/Kapkoi Block 9/Gutongorio/68 and 69, for over 20 years until the respondents



- moved to the neighborhood and started operating a church, subjecting the applicants to excessive noise pollution during their church activities where they use powerful loudspeakers, high voltage preaching, loud music and intercessory sessions, hence interfering with the applicant's quiet enjoyment of their property and affecting their families and neighbor's psychological wellbeing.
4. Further, the applicants aver that despite demand notice served upon the respondents and the filing of a cessation from the Director of Environment, Natural Resources, and Climate Change, Trans-Nzoia County Government, the noise pollution has continued unabated, causing harm and violating the applicants' constitutional right to a clean and healthy environment.
 5. It is averred that parties attempted to engage in negotiations that bore no fruits given the respondents have failed to address the issue of noise pollution. In further grounds, the 1st applicant avers that he is a co-owner of Title Numbers Waitaluk/Kapkoi Block 9/Gutongorio/68 which is approximately 4.00 ha, while the 2nd applicant resides on Title Numbers Waitaluk/Kapkoi Block 9/Gutongorio/69 measuring 5.24 ha. Copies of the title deed are marked as annexures BE2 a-b.
 6. Again, the 1st applicant avers that the respondents hold prayers on Wednesday to Saturday, from 4:00 p.m. to 8:00 p.m., and transcend into "Keshu" while worship begins at 7:00 a.m. till late on Sundays, but church services have become unbearable and disruptive.
 7. The 1st applicant also avers that he complained to the Director of Natural Resources and Climate Change and the respondents were served with a letter to restrict their noise levels to below 60dB and construct a facility with soundproof acoustics as per the letters dated 19/3/2024 and 11/4/2024 are annexed as BE-3 and 4.
 8. It is deposed that the respondents after the interventions only temporarily reduced the noise but later on resumed, forcing the applicants to issue demand letters through their lawyers but was all in vain. Similarly, it is deposed that despite the respondents admitting liability, they have failed to reduce the noise. The various correspondences are marked as annexure BE-6.
 9. The 1st respondent opposes the application through his affidavit sworn on 13/3/2025, terming the application as malicious and lacking merits since no other neighbors have complained about the church activities, the sole interest being in the church's parcel of land. The 1st respondent deposes that the noise pollution has not been confirmed by National Environmental Management Authority (NEMA). In addition, the 1st applicant denies the use of loudspeakers, music, or intercessory sessions with loud noise as alleged. He terms the application as an infringement on their right to worship.
 10. By a report dated 19/3/2025, NEMA and the County Government of Trans Nzoia in compliance with orders of 17/2/2025. The report indicates that the County Director and the environmental officer visited the locus in quo. The observations are that: the church is a semi-permanent iron sheet building constructed 6 years ago on a ¼ acre, located approximately 500m from Simatwet Centre; it lacks an Environmental Impact Assessment (EIA) License from NEMA, yet it is in a residential area with 5 homesteads where one homestead is about 60m away.
 11. The report indicates that at the time of their visit, there were no church activities going on and there were no signs of a public address system. The report states that the area residents confirmed previous noise from the church which has since been reduced due to the minimized use of the public address system. From their analysis and findings, the report indicates that the church lacks the EIA License which is in contravention of Section 58 of the Environmental Management and Coordination Act (EMCA).



12. Further, the report states that despite previous concerns about noise pollution, the same has been significantly reduced due to minimized use of a public address system. The report also noted that since the church is within a residential area, it may contribute to environmental concerns on noise levels and potential land-use conflicts.
13. The recommendations in the report are that the church should commence the licensing process by NEMA, which should assess both the environmental and social impacts, before granting or denying the license.
14. To manage noise pollution, the report recommends that the church should comply with the EMCA (Noise and Excessive Vibration Pollution) Regulations 2009, while NEMA and the county officials should monitor to assess compliance. Regarding land use and planning, the County Government was advised to review zoning regulations to determine whether the location is appropriate for religious institutions. The report recommends that any future developments by the church ensure proper land-use planning and stakeholder engagement.
15. The issue for determination by this court is whether the applicants have established a prima facie case to warrant the grant of interlocutory injunction sought. The principles to be considered by this court in determining whether or not to grant the interlocutory injunction as sought are well settled in the *Giella -vs- Cassman Brown* [1973] EA 358. The court held that an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.
16. Has the applicant, in this case, made out a prima facie case with a probability of success within the description in the case of *Mrao -vs- First American Bank of Kenya Limited & 2 others* (2003)? From the facts of this case, the court has been moved under a certificate of urgency, by the applicants, to issue temporary injunctive orders against the respondent. At this stage, the court is only required to determine whether the applicants are deserving of the orders sought, without determining the merits of the case.
17. Articles 43, 69, and 70 of *the Constitution* provide for the rights and obligation to respect and enforce environmental rights on both the state and individuals. Again, Article 42 thereof grants every person a right to a clean and healthy environment. This includes the protection of the environment for present and future generations. See *Kindiki -vs- 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).
18. The applicants have complained of noise pollution and violation of their right to a healthy and clean environment. The applicants have produced letters of complaint written to the institutions charged with the responsibility of managing the noise and enforcing the required standards.
19. The director in deed wrote a caseation to the respondents, which the applicants alleged was followed for some time and later abandoned. The report by NEMA and the County Government officials indicate that upon visiting the locus in quo, the residents confirmed previous noise which has since been reduced. They also indicate that there were no signs of a public address system. The applicants have not denied these facts in a supplementary affidavit. The noise level has not been measured by either party to confirm a violation of the Regulations. See *Kilimani Project Foundation -vs- B Concept Limited t/a B Club Nairobi & 7 others* [2019] eKLR, on the importance of having a clean and healthy environment. The right must be enforced within the conduits of the law.



20. Moreover, the applicants have also failed to state and demonstrate the less likely they are likely to suffer if the orders are denied. It is not sufficient to pray for injunctive orders without a justification for the same. Be that as it may, since it is confirmed that the noise has since reduced and seems bearable to the residents within the vicinities of the respondents, it court is inclined to order parties to maintain the prevailing status quo, which shall be monitored by both NEMA and the County Government Officers until the hearing and determination of the suit.
21. Issues on the licensing of the church shall be addressed during the hearing of the main suit and not at this preliminary stage.
22. Parties to comply with Order 11 of the Civil Procedure Rules and set down the suit for hearing on priority basis.
23. Costs in the cause.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Arunga for defendants/respondents present

Ngeywa for the plaintiff/applicants present

HON. C.K. NZILI

JUDGE, ELC KITALE.

RULING: KITALE elc misc. appl e003 of 2025 - d.o.d - 18/06/2025

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