



**Resley v White Cottage Primary School (Environment & Planning Miscellaneous Application E001 of 2025) [2025] KEELC 4438 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4438 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & PLANNING MISCELLANEOUS APPLICATION E001 OF 2025**

**AA OMOLLO, J  
JUNE 12, 2025**

**BETWEEN**

**JACQUELINE MARIE RESLEY ..... PETITIONER**

**AND**

**WHITE COTTAGE PRIMARY SCHOOL ..... RESPONDENT**

**RULING**

1. For determination is the Notice of Motion application dated 17<sup>th</sup> January, 2025 filed by the Petitioner. In the motion she seeks for orders:
  - a. This application and petition be certified urgent and heard ex parte in the first instance.
  - b. That pending inter-parties hearing and determination of this application, a temporary injunction be issued restraining the respondent whether by itself, its employees, agents and/or servants from using loud speaker and playing loud music, using electronically enhance equipment's over the weekends and public holidays in White Cottage School Compound.
  - c. This Honourable court be pleased to issue any other order it deems fit and expedient to grant.
  - d. The cost of this application be in favour of the applicant.
2. The application is supported by 15 grounds listed on its face inter alia;
  - a. The applicant is Senior Citizen and have lived in the current property which she owns since 1992.
  - b. The Respondent/White Cottage School came into operation at their current location in 1993.
  - c. The applicant has maintained an excellent relation with all neighbours and is active in maintaining and sustaining a peaceful, serene environment, for all the residence in Kinanda road and the immediate environs.



- d. The coexistence of the applicant and the respondent has been polite, cordial and respective till Mid-Year 2000 when the respondent started renting out the school playground to all the sundry to host weddings, pre-weddings and other social events on weekend and public holidays at the school Playground. The said events use loud speakers which are electronically enhanced and terrorizes the entire neighbourhood with loud music and pep-talk all weekends, public holidays and this events sometimes goes on to late nights.
  - e. The applicant on numerous occasions tried to dialogue with the School Management but the attempts were ignored with contempt and respondent continued with the illegality with impunity and contempt.
3. The application is also supported by her affidavit sworn on the same date of 17<sup>th</sup> July, 2015.
  4. The Respondent filed a replying affidavit sworn by Jane Githinji on 10<sup>th</sup> February, 2025 in opposition to the grant of the orders sought. She deposed that the application is premised on general, vague and unproven allegation, namely, that loud noise usually emanates from the Respondent school yet no evidence has been adduced to support the existence of such loud noise at any given time.
  5. The Respondent avers that the Applicant has previously reported the Respondent to various authorities accusing the Respondent of hosting events which produce loud noise but has never described the events and the dates when the events were allegedly hosted.
  6. It is their contention that the application does not disclose any prima facie case that warrants the issuance of the orders sought and avers that if the same is granted it will cause them irreparable harm since it will result in stopping them from carrying out mandatory school activities.
  7. The parties prosecuted the application by way of filing written submissions. The applicant's submissions are dated 14<sup>th</sup> March, 2025 while for the Respondent are dated 18<sup>th</sup> March, 2025. In brief, the Applicant submitted that their rights have been violated and continues to be violated as long as the Respondent continues to use electronically enhance loud speakers to play music in the school grounds. She relied on the persuasive case of;
    - a. Kindiki Vs. Chrishan Foundation Fellowship Church & 5 Others (2024) eKLR.
    - b. Amani Residents Welfare Association Vs. Senteu t/a Cocoried Wines & 5 Others (2024) KEELC.
  8. On their part, the Respondent submitted that the orders cannot be issued as presented since there is no prayer for granting of the orders pending determination of the petition. In the alternative, the Respondent argues that the Applicant has not produced evidence to show that there was excess noise given there is no expert report filed. They cited the case of Jaygee Ltd & Another Vs. Githome t/a. the Wine & Bottle Bar & Grill and 2 Others (2024) KEELC 558. They urged the court to dismiss the application.

**Determination:**

9. It is indeed true that prayer (b) of the Motion is only seeking orders pending inter partes hearing of the motion and not pending determination of the petition. However, under paragraph (c) it sought orders this court deems just to grant. It is obvious from the affidavit sworn for and against the application that the orders sought to remain in place pending determination of the petition. Consequently, I shall determine the application on the premise if the orders can issue pending the determination of the petition.



10. It is now a settled principle of law that for orders of injunction to issue, an Applicant must demonstrate that there is a prima facie case; or it is/will suffer irreparable loss unless the orders are made; or on whose behalf the balance of convenience tilts.
11. Has the Applicant demonstrated a prima facie case? The Respondent deposes thus under paragraph 8 of the Replying Affidavit:
- “That I am aware that the school hosts school related events such as;
- i. Sports days
  - ii. Students Christian Sunday Services
  - iii. Christian rallies and baptisms
  - iv. Graduations and promotion to next class”
12. This in my view is prima evidence that the activities listed generates noise from the Respondent’s School. The only question is whether the levels of the noise are within/out the permissible levels under the Noise & Excessive Vibration (Pollution Control) Regulations, 2009. The said question raises a triable issue that can be answered by adducing evidence during a trial and the failure to present expert report does not negate the fact of prima facie case.
13. However, the nature of prima facie case established herein is not sufficient to make this court grant the orders. Hence the next question of; Will the Applicant continue to suffer loss unless the orders are granted? The Applicant deposes thus under paragraph 6 of the Supporting Affidavit:
- “That our co-existence was cordial and respective till Mid-Year 2000 when the Primary School started renting out the school playground to all and sundry to host weddings, pre-weddings and other social events on Saturdays, Sunday and Public Holidays at the School Playground. This matter was verbally reported to Nairobi County Government, area chief, and the Gigiri Police Station who on numerous occasions visited the school but no satisfactory outcome came from the said visits.”
14. Thus the Applicant’s complaint relates more to activities/events that are outside of the school activities which if halted the Respondent is not likely to suffer loss. The Applicant avers that she lives in this neighbourhood and has lived there since 1992. Before filing this case, she had lodged complaints with various offices which process the Respondent acknowledges. The Applicant cannot have been going through this trouble of walking from office to office if she was not suffering. It would be unfair for this court to also disregard her complaint merely for lack of a report filed from an environmental expert. In any event, the Respondent would have as well taken measurements (as a defence against the issuance of the orders) to show the levels they are emitting are within the permissible levels.
15. In light of the above analysis, I hold that the balance of convenience lies in granting temporary orders of injunction that restrain the hosting of activities that are not school related to wit social events of weddings & pre-weddings on Saturdays, Sundays and Public Holidays while applying electronically enhanced sound equipments.
16. Thus, the application succeeds in part in terms of paragraph (c) of the motion that the orders which this court deems just to grant and which it grants are:
- a. Pending hearing and determination of this Petition, the Respondent either by itself, agents or persons acting on its behalf are hereby restrained by way of temporary injunction from hosting



social events not related to the school activities to wit, pre-weddings, weddings and parties while using electronical enhanced sound equipments (loud music).

- b. Cost of the application in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE, 2025**

**A. OMOLLO**

**JUDGE**

