



Estambale & another v Situma & another (Being Sued as Representatives of Deliverance Church International Simatwet, Gutongorio, Trans Nzoia County) (Environment and Land Case E003 of 2025) [2026] KEELC 1139 (KLR) (25 February 2026) (Judgment)

Neutral citation: [2026] KEELC 1139 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E003 OF 2025
CK NZILI, J
FEBRUARY 25, 2026**

BETWEEN

BENSON ESTAMBALE 1ST PLAINTIFF

LINAH OTTICHILO 2ND PLAINTIFF

AND

REV. JOHN SITUMA 1ST DEFENDANT

REV JANE SITUMA 2ND DEFENDANT

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

JUDGMENT

1. The plaintiffs, as residents of Gutongorio B in Sirende Ward, living on Title Nos. Waitaluk/Kapkoi Block 9/Gutongorio/68 and 69, have sued the defendants as representatives of Deliverance Church International, Simatwet, who are their neighbours, for nuisance. They pray for:
 - a. Declaration that the defendants have violated their right to a clean and healthy environment under Article 42 of *the Constitution*.
 - b. Declaration that the defendants have violated the plaintiffs' right under Article 69 of *the Constitution* to eliminate processes and activities that are likely to endanger the environment.
 - c. Declaration that the defendants are in breach of or in violation of Section 3 of the Environmental Management & Co-ordination Act.
 - d. Permanent injunction prohibiting the defendants from conducting their activities within an area designated for residence.



- e. Compensatory damages for violation of Articles 42, 69, and 70 of *the Constitution*
 - f. Enforcement of noise regulations restricting the defendants' level of noise pollution to below 60dB at all times during worship times, and construction of a facility with soundproof acoustics.
2. The defendants opposed the suit through a statement of defence dated 26/6/2025. They denied that the plaintiffs had been subjected to excessive noise pollution emanating from the church's activities as alleged. The defendants denied the alleged use of powerful speakers or playing loud music and having disruptive intercessory sessions or "keshas".
 3. Further, the defendants denied using electronic amplifying systems or equipment without soundproofing as alleged. The defendants denied that the plaintiffs had been subjected to a significant disturbance that had adversely affected their quality of life and that of their families.
 4. The defendants denied that any other residents apart from the plaintiffs have been affected as alleged, given that no other resident has complained about the same. Further, the defendants denied that the plaintiffs' constitutional right to a clean and healthy environment under Article 42 of *the Constitution* warranted the reliefs sought.
 5. At the trial, Benson Estambale testified as PW1. He relied on a witness statement dated 29/1/2025 as his evidence-in-chief. PW1 told the court that he has been living peacefully on the suit properties for the last 20 years until 2019, when the defendants bought a property from his immediate neighbour and erected a church premises in a residential area, to which they started a daily church fellowship.
 6. PW1 said that the defendants' worship activities start as early as 3:00 a.m. daily, until late in the night, making unbearable noise. PW1 said that the defendants have an electronic amplifying system used to enhance noise without any soundproof equipment, hence causing excessive vibration in his residence.
 7. PW1 said that the defendants run high voltage preaching, play loud music accompanied by loud intercessory sessions that emit excessive loud noise during evening and early morning hours, running daily up to the weekends, the peak session being on Sunday when the church session takes the whole day.
 8. Further, PW1 told the court that the said noise has generally interfered with his daily life schedule, as well as that of other residents in the vicinity.
 9. PW1 told the court that as a result, he has been subjected to significant disturbances that have adversely affected his quality of life, including his constitutional right:
 - a. Interfering with the quiet enjoyment of his property.
 - b. Effect on his physiological well-being and that of his family.
 - c. Interference with his life schedule and that of other residents.
 - d. Sleep disturbances leading to difficulty falling asleep and waking up too early, or experiencing poor sleep quality.
 - e. Elevated stress level, anxiety, and irritability.
 - (f) Experiencing mood swings and fatigue.
 10. PW1 told the court that, though he filed a complaint with the Director of Environment, Natural Resources, and Climate Change, County Government of Trans Nzoia, the noise pollution has



continued unabated, causing ongoing harm and violating his constitutional right to a clean and healthy environment.

11. PW1 said that efforts to engage the defendants for a possible out-of-court settlement have borne no fruit, as they have failed, neglected, or refused to address the issue, leading to the persistence of the noise, which he can no longer tolerate.
12. PW1 relied on a copy of his identification card, a copy of the title deeds for Waitaluk/Kapkoi Block 9/ Gutongorio/68 and 69, a copy of the complaint letter to the County Government dated 19/3/2020, copies of a response dated 14/4/2020, and a noise assessment report dated 8/3/2025, as P. Exhibit No. (1) - (6) respectively.
13. PW2 was Linah Otichilo. She relied on a witness statement dated 29/1/2025 as her evidence. PW1 associated herself with the testimony of PW1. She told the court that the suit property has been her primary home since June 2023, which is directly next to the defendants' church. PW2 said that life in the vicinity has been very hard since the defendants established the church in the neighbourhood.
14. PW2 said that when she complained about the excessive noise, she was assaulted, leading to a report with the police. PW2 said that whereas the residents of the vicinity have no problem with the defendants exercising their right of worship, it has to be balanced with their right to a clean and healthy environment. PW2 said that they hired a consultant as per P. Exhibit No. (6), who prepared a report dated 16/7/2025, confirming the noise levels.
15. Sugutu Junet testified as PW3. She told the court that she holds a Bachelor of Environmental Science from Karatina University, 2017, and has been working with the National Environment Management Authority (NEMA).
16. PW3 told the court that pursuant to an order issued on 12/2/2025, she visited the site on 9/3/2025. Her testimony was that the church premises are situated in a residential area surrounded by five homesteads, the nearest being approximately 16 metres away.
17. PW3 told the court that the structure of the church is a semi-permanent build of iron sheets, on a quarter acre of land. PW3 said that at the time of the visit, there were no church activities going on. PW3 said that she saw no sign of a public address system at the time. PW3 said that from the interview of the residents, she gathered that there is a generation of noise, though the church uses a minimal public address system.
18. Further, PW3 told the court that the church had no Environmental Impact Assessment License, which is a legal requirement, hence it was in contravention of Section 58 of EMCA. PW3 told the court that they recommended that the defendants should immediately initiate the process of obtaining an EIA license, for NEMA to assess the Environmental and Social Impact Assessment (ESIA), before granting or denying the licence.
19. PW3 told the court that the defendants' church was ordered to comply with the EMCA 1999 Regulations on Noise. Similarly, PW3 told the court that the County Government of Trans Nzoia should continue to monitor and assess compliance with the noise regulations for religious organizations' operations in residential areas. PW3 produced the report dated 19/3/2025 as P. Exhibit No. (7).
20. In cross-examination, PW3 told the court that she visited the premises on 13/7/2025 and, based on the historical concerns of the residents, she was able to generate a report.
21. Rev. John Situma Wekesa testified as DW1. He relied on a witness statement dated 26/6/2025 as his evidence-in-chief. DW1 denied that his church was a nuisance to the plaintiffs or the neighbourhood.



DW1 confirmed that his church was established in the area in 2019 and has never had issues with the other residents, save for the plaintiffs. DW1 confirmed that his church is semi-permanent and is located in a residential area surrounded by several homes. PW1 confirmed that his church uses electronic sound amplifiers, microphones, and speakers during its church sessions, which, in his view, are not very powerful during the crusades.

22. DW1 said that during church services, some of the speakers are placed outside the church premises but are operated within the permitted noise limits. DW1 confirmed that his church has no soundproof equipment or materials in line with the NEMA recommendations. DW1 said that after NEMA visited the church, they were given requirements or limits that they were initially not aware of.
23. Further, DW1 said that after the visit of July 2025, the church had made adjustments in line with the recommendations. He denied that the church activities began as early as 3:00 a.m. and ran till late in the night. DW1 said that although the church uses amplifiers, the noise is within the permitted range recommended by NEMA. DW1 said that no other neighbour has complained except the plaintiffs.
24. As to the complaint to NEMA, DW1 said that it was true that NEMA had directed them to take remedial and mitigating measures, but had yet to install the recommended equipment. DW1 said that he is aware of the environmental rights regarding excessive noise and the attendance offences.
25. The plaintiffs rely on written submissions dated 1/12/2025. They submit that noise pollution is prohibited by law, under the EMCA Noise and Excessive Vibration Pollution (Control) Regulations, 2009. The plaintiffs submit that Regulation 6(1) thereof sets the residential noise limit at 55dB during the day, and 45 dB at night. The plaintiffs rely on Regulation 3(1) to submit that the defendants' activities on the suit properties emit excessive, unnecessary, and unreasonable noise.
26. Further reliance is placed on *Odongo & 4 others (Acting on their Own Behalf and as Members of Kiembeni Hillside Residents Association) -vs- Mndugu t/a Holistic Mission for all Nations Kiembeni Worship Sanctuary & 3 others (Environment & Land Petition 005 of 2022) [2022] KEELC 13706 (KLR) (26 October 2022) (Judgment)*, where the court held that noise pollution not only violates environmental statutes, but also the right to dignity, health and peaceful enjoyment of property, and that religious institutions are not exempt from compliance with environmental laws.
27. The plaintiffs submit that the defendants are interfering with their quiet enjoyment of their property, pose environmental and health risks, which are unlawful and actionable, and amount to a nuisance. Reliance is placed on *Kindiki -vs- Christian Foundation Fellowship Church Mpakone through its registered Trustees & 5 others [2023] KEELC 21869 (KLR)*.
28. On whether the plaintiffs' constitutional rights have been violated. The plaintiffs rely on Articles 42, 69, and 70 of *the Constitution*, and submit that they have suffered from loss of sleep, stress, and psychological harm. The plaintiffs submit that they have proved a violation of their constitutional rights and are deserving of the orders sought as held in *Odongo -vs- Mndugu (supra)* and *Gitobu Imanyara -vs- Attorney General(2016) eKLR*.
29. The issues calling for my determination are:
 1. If the plaintiffs have proved breach and violation of their right to a clean and healthy environment by the defendants.
 2. Whether the plaintiffs are entitled to the reliefs sought.
 3. What is the order as to costs?



30. The World Health Organization defines environment as all the physical, chemical, and biological factors external to a person and all his related behaviours.
31. Section 3 of the EMCA No. 8 of 1999 defines the environment as the physical factors of the surroundings of human beings. They include sound, odour and taste. The right to a clean and healthy environment is one of the fundamental rights and freedoms set out in Article 42 of *the Constitution*.
32. A safe, clean, healthy, and sustainable environment is considered integral to the full enjoyment of a wide range of human rights, including the right to life, health, food, water, and sanitation. A threat to a clean and healthy environment potentially hinders the attainment of other rights under both *the Constitution* and the EMCA.
33. Kenyans are entitled to the right to a clean and healthy environment. The EMCA sets the institutions, systems, and procedures towards the attainment of the right to a clean and healthy environment, such as the NEMA, County Environment Committees, Environmental Planning, Environmental Impact Assessment, Environmental Audit and Monitoring, Environmental Quality Standards, Environmental Restriction Orders, and Law Enforcement Agencies, such as courts.
34. Pollution is defined as any direct or indirect alteration of the physical, thermal, chemical, biological, or radiation properties of any part of the environment, by discharging, emitting, or depositing wastes to adversely affect any beneficial use or welfare. It takes the form of air, water, or soil pollution. See Prof. Kariuki Muigua “Realizing the Right to a Clean, Healthy and Sustainable Development <http://www.kmco.co.ke>.
35. Article 69 (1) of *the Constitution* outlines the obligations of the state with respect to the environment and the measures it can undertake in protecting and conserving the environment.
36. Article 69(2) thereof obligates every person to cooperate with state agencies, organs, or other persons to protect and conserve the environment.
37. Article 70(1) thereof provides that a person may apply to a court of law for redress if the right to a clean and healthy environment under Article 42 is likely to be denied, violated, infringed, or threatened.
38. Article 70(2) gives the court powers to issue certain orders or reliefs, or measures to prevent environmental harm and compensate for any environmental degradation.
39. Further, Article 70(3) thereof provides that an applicant does not have to demonstrate having incurred loss or suffered injury.
40. In *T.N. Godavarman Thirumulpad -vs- Union Of India & Orthers* [2012], the Supreme Court said that the environment is only protected as a consequence of and to the extent needed to protect human well-being. See also *Martin Osano Rabera & another -vs- Municipal Council of Nakuru & 2 others* [2018] eKLR.
41. In *Mbae & 4 others (Suing on Behalf of the Affected Residents and Landowners of Kihoto Area, Naivasha Sub County, Nakuru County) -vs- Cabinet Secretary, Ministry of Interior and National Administration & 2 others* [2026] KEELC 111 (KLR), at issue was the flooding of Lake Naivasha and the failure to mitigate, regulate, settle, enforce riparian protection, and respond to the disaster of flooding, and the attending pollution, which was contrary to Articles 42, 67 - 70 of *the Constitution*.
42. It was alleged that the unprecedentedly rising water levels of Lake Naivasha since 2019 have created a humanitarian and environmental crisis, to which the respondents had failed in their constitutional and statutory duties to manage the disaster, leading to widespread displacement and suffering. The



- court said that it was a fundamental duty of the state and state organs to observe, respect, protect, promote, and defend the Bill of Rights under Article 21(1) of *the Constitution*. The court cited *Kimeu & 3074 others -vs- Kenya Pipeline Company Ltd & another (Environment and Land Petition 9 of 2019 & Petition 8 & 12 of 2019 (Consolidated)) [2025] KEELC 5239 (KLR) (11 July 2025) (Judgment)*, otherwise known as the Thange River oil spill case, that Article 21 of *the Constitution* demands proactive and sustained commitment, not passivity.
43. The court held that under Article 26 of *the Constitution*, the right to life encompasses the right to exist, which should be interpreted broadly, including the conditions to sustain life.
 44. Further, the court said that Section 2 of the EMCA on the precautionary principle, is not a mere suggestion but are mandates to the NEMA where there exists a threat of damage, the precautionary principle was a legal shield to the petitioners, and the respondent should not have adopted a wait and see approach, which the precautionary principle forbids when human life and property are at stake.
 45. In *Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) -vs- National Environment Management Authority & 3 others [2024] KESC 75 (KLR)*, the court held that Section 3(3) of EMCA guides the court at arriving at a determination in an application for redress for alleged to contravention of the right to a clean and healthy environment, in line with Principle 15 of the Rio Declaration on Environment and Development.
 46. Further, the court held that remediation is the process of sustainable development. The court said that the old and often quoted case of *Ryland -vs- Fletcher (1868) LR 3 HL 330*, imposes strict liability on the owner of land for damage caused by the escape of substances to his or her neighbour's land. The court said that the prerequisites are that the defendant must have made a non-natural or special use of his land, that the defendant brought onto his land something likely to do mischief if it escaped, the substance in question escaped, and the plaintiff's property was damaged because of the escape. The court said that the state's obligation is to take precautions before relying on the polluter pays principle.
 47. In *David M. Ndetei -vs- Orbit Chemicals Industries Ltd [2014] eKLR*, the court held that the substance or activities carried out by the defendant on his land must be special, exceptional, or out of the ordinary, hazardous, or inherently dangerous with a high risk of great harm.
 48. In *M.C. Mehta -vs- Union of India [1987] 1 SCC 395*, the court said that the test upon which liability is imposed is based on the nature of the activity, and where the activity is inherently dangerous or hazardous, the absolute liability for the resulting damage attaches to the person engaged in the activity.
 49. In *Orbit Chemical Industries -vs- Prof. M. Ndetei [2021] eKLR*, the case related to the discharge of wastewater or chemicals, used to manufacture detergents, on the respondent's land. The court said special damages must be strictly pleaded and proved. In *Esther Wanjiru Mwangi & Others -vs- Xinghui International (K) Ltd [2016] eKLR*, the court held that the duty to protect the environment is not the sole preserve of the state.
 50. In *Odongo & 4 others (Acting on their own Behalf and as Members of Kiembeni Hillside Residents Association) -vs- Samson t/a Jesus Manifestation Center & 3 others [2022] KEELC 13703 (KLR)*, the court observed that the present case was one of poor physical planning where informal structures or social enmities sprang up in residential estates. The court said that the regulation made under the EMCA, namely EMCA (Noise & Excessive Vibration Control Regulations 2009), sets 55dB during the day and 35dB at night, as the prescribed standard to give effect to the enjoyment of the right to a clean and healthy environment.



51. In *Kindiki -vs- Christian Foundation Fellowship Church Mpakone* [2024] KEELC 6063 [KLR] (18th September 2024) (Judgment), the court cited *Chebii & Others -vs- SBI International Holdings & Another* [2024] KEELC 3294 [KLR], that a project proponent must take steps for the safety of its neighbours and other persons who may be affected by the project. The court said that the Bill of Rights applies to all laws and applies both vertically and horizontally, binding state and non-state agencies.
52. In *John Chumia Nganga -vs- Attorney General & another* [2019] eKLR, the court held that a nuisance is an act that interferes with, or disturbs, or annoys a person's right in connection with the land, which escapes to his land, causing encroachment of physical damage, or which unduly interferes with a neighbour's use or enjoyment of his land.
53. In *Re Noise Pollution AIR 205 SC 3136*, the Supreme Court of India held thus: "Noise is more than a nuisance. It constitutes a real and present danger to people's health day and night, at home, at work, and at play. Noise can produce serious physical and psychological stress. No one is immune to this stress. Though we seem to adjust to noise by ignoring it, the ear, in fact, never closes, and the body still responds -sometimes with extreme tension as to a strain in the night. Further, that noise is a type of atmospheric pollution. It is a shadowy public enemy whose nuisance has increased in the modern era of industrialization and technological advancement."
54. Learned counsel Mr. Kraido, commenting on noise pollution from churches, says it is a severe problem that needs to be addressed as soon as it happens. He quotes a 2015 study by Enock Abe Wawa & Galcano Canny Mulaku, Department of Geospatial & Space Technology, UIN 2015, that the average noise levels in Nairobi CBD range between 61dB and 78dB, which are above the permitted averages of 40dB as recommended by the World Health Organization (WHO).
55. Mr. Kraido sets out the effects of exposure to high levels of noise, including poor sleep quality, stress, anxiety, irritability, cognitive impairment, noise-induced hearing loss, cardiovascular diseases, hypertension, and depression.
56. In *Church of God (Full Gospel) in India -vs- K.K.R. Majestic Colony Welfare Association* (2000), except for compliance with environmental regulations, they exercise religious freedom. The judiciary has to play its role to enforce environmental rights, even as the effects of religious activities, fundamental rights, and freedoms on the environment do not apply in isolation.
57. In *Colony Welfare Association & Others 2000 INSC 425*, at issue was whether a particular country of sect can claim the right to add to noise pollution on the ground of religion by beating of drums and loud chanting prayers by use of microphones and loud speakers, interfering with a neighbour's peace, in the name of religious freedoms under Articles 25 and 26 of the Indian Constitutions. The court held that such rights are not absolute and must co-exist with the rights of others and public welfare considerations, such as public order, morality, and health constraints. The court emphasized the necessity of maintaining public tranquility, particularly in residential areas, and the state's role in regulating activities that may harm public health and welfare.
58. Turning to the instant case, the plaintiffs have established that they are owners of title Nos. Waitaluk/Kapkoi Block 9/Gutongorio/68 and 69, which neighbours the defendants' church premises, as admitted both in the statement of the defendants and in the defence testimony.
59. PW2 has narrated that the defendants are operating church premises using electronic amplifying equipment, speakers, and machines, with no soundproof gadgets. P. Exhibit No. (7) is a NEMA report confirming that the defendants have no EIA license or ESIA report. The Noise Assessment Report was produced as P. Exhibit No. (6) confirms that using a Lutron Noise Level Meter, it was established



that the noise levels exceeded the EMCA daytime residential threshold of 50dB, with some readings surpassing 70dB, following data collection on 13/7/2025 from 7:00 a.m. to 12:30 p.m.

60. Whereas the defendants admit that it operates a church in the vicinity of the plaintiff's residence, it denies that the church and its equipment generate excessive noise that has threatened, infringed, or breached the plaintiff's constitutional rights to a clean and healthy environment. The defendants, while admitting that their church lacks an EIA license and is a semi-permanent structure with no soundproof equipment, say no other neighbours, save for the plaintiffs, have raised issues. The defendants' witness admits that the church has yet to take remedial or mitigating measures as recommended to it by NEMA.
61. Excessive Noise Part 11 of the Regulations defines excessive noise as one that is loud, unreasonable, unnecessary, or unusual, which disturbs, annoys, injures, or endangers the comfort, repose, health, and safety of others and the environment.
62. In determining whether the noise is loud, the factors to consider include the time of the day, the proximity to the residential neighbourhood, whether the noise is recurrent, intermittent or constant, the level and intensity of the noise, whether the noise has been enhanced by any electronic devices, or whether the noise can be controlled without the effort or expense to the person making the noise.
63. Regulations 5 and 6 bar anyone from making or continuing to make such excessive noise, exceeding the levels set in the schedule, unless the noise is reasonably necessary to the preservation of life, health, safety, and property. NEMA in this suit carried out its report under Regulation 3(1) and (2) of the Regulations 2009, and made a recommendation dated 19/3/2025, which the defendants have yet to adhere to. P. Exhibit No. (6) shows that the noise levels on 13/6/2025 were excessive even after NEMA had made its recommendation.
64. The plaintiffs, like any other landowners, have a constitutional right to a clean and healthy environment. Any neighbour to them owes a duty of care generally and, in particular, must uphold *the Constitution*, and observe, respect, promote, and protect the plaintiffs' rights, while bringing to his or her land any unnatural item, such as the construction of a church and the running of church services using voice amplifying equipment. By bringing the church to the vicinity, it was foreseeable on the part of the defendants that there would be noise emanating therefrom, likely to spill over to the neighborhood.
65. The law, therefore, steps in to regulate such activities to ensure that there is no infringement of the rights of the neighbours through excessive noise. Regulation 9(3) of the 2009 Regulations forbids the defendants from making or causing any loud, unreasonable, unnecessary, or unusual noise that annoys, disturbs, injures, or endangers the comfort, repose, health, or safety of others and the environment. The defendant has yet to dispute the findings and the recommendations set out in P. Exhibits No. (6) and (7).
66. Under Article 70(3) of *the Constitution*, the plaintiffs need not prove any injury or damage suffered. P. Exhibit No. (6) and (7) are clear on the excessive noise levels.
67. DW1, in his evidence, admits that the church premises are situated in a residential area not far away from the plaintiffs' homesteads. He says that his church has no E.A.I license. It also lacks soundproof apparatus to minimize, reduce, avoid, or eradicate any excessive noise or sound. The church, going by the reports, lacks permanent walls or noise-reducing equipment as per the framework set in Sections 101-103 of the EMCA.
68. The defendants plead or submit that they are merely exercising the right to worship, which the plaintiffs are interfering with by being oversensitive, unlike other neighbours who have not lodged such a



- complaint. Religious institutions are not exempt from public nuisance laws, merely because they are places of worship, especially where the noise levels are above the permitted limits.
69. Regulations 2009 specify permissible noise levels in different zones, industrial, commercial, residential, and silence zones, and outline restrictions on the use of loudspeakers and similar devices to mitigate noise pollution.
 70. As the court exercises the delicate equation between upholding religious freedoms and enforcing environmental and public health regulations, it reaffirms that while *the Constitution* protects the right to practice one's religion, such rights are not unfettered and must harmonize with the rights of others and societal norms.
 71. As held in the Church of God (Full Gospel) in India -vs- K.K.R. Majestic Colony Welfare Association (supra), a particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person co-exists in harmony with the exercise of another fundamental right by others, and also with the reasonable and valid exercise of power by the NEMA and County Government in the interest of social welfare as a whole.
 72. Looking at *the Constitution*, the statutes, and the regulations, religious organizations are not exempt from following the law on the right to a clean and healthy environment. The time has come to raise awareness among the men of the flock that religious activities relating to noise pollution are regulated activities to protect public and private interests. The right to exercise religious rights does not entail an absolute licence to act in ways that are prejudicial to peace and public morality. Manifestation of religion through external expression with implications for public order and the right of others is regulated by statute on account of necessity and proportionality.
 73. In this case, excessive noise is inherently detrimental to human health. Specific studies indicate that prolonged exposure to noise levels exceeding 85dB poses serious risks to the auditory system, including the potential perforation of the eardrum and subsequent temporary or permanent hearing loss. See WHO Environmental Noise Guidelines for the European Region (2018).
 74. In Moreno Gomez -vs- Spain Appl. No. 4143/02, the court held that the Spanish government's failure to control excessive noise from a nightclub violated the applicant's right to respect for her private and family life.
 75. In line with international standards, our laws and *the Constitution* support the position that excessive noise, whether from religious activities or otherwise, is not protected under the guise of freedom of expression or religion. Laws and regulations under the EMCA that curtail noise pollution are therefore legitimate and justifiable in a democratic society such as Kenya, to protect public health, safety, and the rights of other citizens, such as the plaintiffs herein.
 76. No religion, including that of the defendants, mandates that worship must be conducted in a manner that disrupts the peace or the rights of others. In civilized societies such as Kenya, religious expression aspires to be, and its activities must be exercised with restraint, especially when it causes distress, anxiety, or depression to other individuals, such as the plaintiffs, who are entitled to the right to sleep, study or rest, without being subjected to undue auditory disturbance, through religious activities of the defendants, manifested through sound amplification.
 77. Whereas the defendants have religious rights, they cannot exercise those rights in a vacuum, or in total disregard of the physical, mental, and environmental well-being of the plaintiffs. Religious rights or expression do not extend to creating an aural nuisance that impairs others' enjoyment of their constitutional rights. The general rule is to use your own property so as not to harm another.



78. In view of the foregoing, I find that the defendants cannot justify their activities on account of religious rights.
79. The plaintiffs did not present evidence on compensatory damages. The plaintiffs' suit is allowed as follows:
- a. A declaration that the defendants have violated the plaintiffs' right to a clean and healthy environment, under Article 42 of *the Constitution*.
 - b. A declaration that the defendants have violated the plaintiffs' right under Article 69 of *the Constitution* to eliminate processes and activities that are likely to endanger the environment.
 - c. A declaration that the defendants are in breach of or in violation of Section 3 of the Environmental Management & Co-ordination Act.
 - d. NEMA and the County Government of Trans Nzoia are directed to enforce the noise levels and ensure that the defendants adhere to the *Environmental Management and Co-ordination Act* and its Regulations at all times.
 - e. Costs to the plaintiffs.
80. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25TH DAY OF FEBRUARY 2026.

In the presence of:

Court Assistant - Dennis

Sifuna for Kidiavai for the plaintiffs - present

Arunga for the defendants - present

HON. C.K. NZILI

JUDGE, ELC KITALE.

