



Odhiambo v Trustees of Full Gospel Church of Kenya & 2 others (Environment & Land Petition E008 of 2023) [2024] KEELC 5057 (KLR) (24 June 2024) (Ruling)

Neutral citation: [2024] KEELC 5057 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION E008 OF 2023**

BM EBOSO, J

JUNE 24, 2024

BETWEEN

JUSTIN PETER ODHIAMBO PETITIONER

AND

THE TRUSTEES OF FULL GOSPEL CHURCH OF KENYA ... 1ST RESPONDENT

KIAMBU COUNTY GOVERNMENT 2ND RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**

RULING

1. This petition was bought by Justin Peter Odhiambo. Full Gospel Church of Kenya [the Church] was named as the 1st respondent in the petition. The County Government of Kiambu and the National Environment Management Authority were named as the 2nd and 3rd respondents respectively. The gravamen of the petitioner was that the church was incessantly playing loud music and emitting excessive noise at night and early in the morning, using amplifying equipment. It was his case that the loud music and the excessive noise constituted noise pollution that was adversely affecting his tenants and the tenants' young children. He contended that despite reaching out to the three respondents, they had failed to address his complaint. It was his position that the respondents' conduct and omissions violated his rights under the Bill of Rights.
2. He prayed for the following reliefs against the respondents:
 - a. A declaration that the refusal by the 2nd and 3rd respondents to act on the petitioner's demand violated his entitlement to equality before the law and the right to equal protection and benefit of the law under Article 27 of the *Constitution*.



- b. A declaration that the refusal by the 2nd and 3rd respondents to act on the petitioner's demand violated his right to fair administrative action under article 47 of the *Constitution*.
 - c. A declaration that the 2nd and 3rd respondents refusal to investigate allegations of a continuing violation of the petitioner's fundamental rights and freedoms violated Chapter 6 of the *Constitution* on Leadership and Integrity.
 - d. A declaration that the 1st respondent's continued acts of having vigils at odd hours, having loud music and prayer sessions next to the petitioner's property is a violation of the petitioner's right to a clean and healthy environment as contemplated by Article 42 of the *Constitution* of Kenya 2010.
 - e. A declaration that the respondents have jointly and severally violated the petitioner's rights at Articles 27, 28, 42, 43 and 47 of the *Constitution*.
 - f. An order / mandatory injunction compelling the 1st respondent to sound-proof the church building.
 - g. A mandatory injunction compelling the 1st respondent to cease their regular night vigils, early morning and late night prayer sessions.
 - h. A mandatory injunction against the 2nd and 3rd respondents compelling them to issue and enforce closure notices against the 1st respondent for contravening the provisions of the *Environment Management and Coordination (Noise and Excessive Vibration Pollution (Control) Regulation 2009*.
 - i. An order for the payment of general damages by the respondents to the petitioner for violating his fundamental rights and freedoms under the Bill of Rights.
 - j. Costs of this Petition be awarded to the Petitioner.
 - k. Such orders as befits the interest of justice.
3. The then three respondents entered appearance on diverse dates. Subsequent to that, the petitioner brought an application seeking leave to amend the petition and bring on board the Trustees of Full Gospel Church of Kenya in place of the Full Gospel Church of Kenya. There was no opposition to the said application save that counsel for the 1st respondent orally insisted on an award of costs in favour of one Rev Peter Kaminju Karanja. The oral plea for costs was contested by the petitioner. Consequently, the court directed the parties to the petition to address it on the issue on 18/3/2024. The above oral plea for costs consequent to the disposal of the application for leave to amend the petition is what falls for determination in this ruling.
 4. On 18/3/2024, Mr Oyunge, counsel who had appeared for the Full Gospel Church of Kenya, submitted that the party who sought to be awarded costs was a party who had been served with pleadings relating to the application for contempt orders. He identified the said party as Rev Peter Kaminju Karanja. He contended that the said Rev Karanja was the party who responded to the motion for contempt orders.
 5. Opposing the oral plea for costs, Mr Ometo, counsel for the petitioner, submitted that this petition was brought against the Full Gospel Church of Kenya, emphasizing that the petition was not brought against an individual. Counsel added that Rev Peter Kaminju Karanja had never been joined as a party to this petition hence he did not qualify for an award of costs. Counsel contended that there was no basis for the costs that were sought.



6. The court has considered the oral plea for costs. Under rule 26 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, award of costs in a constitutional petition under the bill of rights is at the discretion of the court. Secondly, in *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR, Petition 3 of 2019, the Supreme Court emphasized the general principle that the successful party ought to be paid costs by the unsuccessful one – the principle that “costs follow the event.”
7. In the oral plea under consideration, the person seeking to be awarded costs as a consequence of the amendments made to the petition is one Peter Kaminju Karanja. The said Peter Kaminju Karanja was not a party to the original petition. Neither is he a party to the amended petition. Similarly, he was not named as a respondent in the application for contempt orders.
8. Clearly, there is no basis upon which this court can properly grant an award of costs of the original petition to Mr Peter Kaminju Karanja who was neither sued as a respondent nor joined as an interested party in the original petition. Indeed, appearance in this petition was made on behalf of the Full Gospel Church of Kenya. There was no appearance on behalf of Rev Peter Kaminju Karanja. The fact that he received papers relating to the contempt application on behalf of the Church does not make him a party entitled to costs.
9. For the above reason, it is the finding of this court that the oral plea for costs by Rev Peter Kaminju Karanja, through Mr Oyunge, has no basis. The same is rejected. There will be no award of costs on the said oral plea.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 24TH DAY OF JUNE 2024

B M EBOSO

JUDGE

Court Assistant: Hinga

