

# Church bells, chimes and calls to prayer: A religious blessing or noise nuisance?

Balancing the right to religious freedom in South Africa

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## Abstract

Property owners have the right to enjoy their property free from noise nuisances but are equally obligated to use their property responsibly, respecting the rights of neighbours. In South Africa, noise nuisances, which include amplified sounds and church bells, are governed by national, provincial, and local regulations. While religious practices such as bell-ringing and calls to prayer (adhan) are protected under section 15 of the South African Constitution, these activities must be balanced with the need to maintain public peace. Case law highlights this balance, also emphasising respect for community rights. Effective regulation should promote tolerance, fairness, and accountability, safeguarding property rights and religious freedoms.

## Keywords

South Africa, religious freedom, church bells, calls to prayer, adhan, noise nuisance, regulation, property rights, reasonableness.

## 1. Introduction

As a general legal principle, property owners have the right to enjoy their property free from noise nuisances. However, this right is accompanied by a duty to exercise ownership within reasonable and acceptable limits, ensuring that the enjoyment of their property does not infringe upon the rights of others. When property owners exceed these reasonable boundaries, their actions may create a nuisance, which is actionable under the principles of neighbour law.

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Nuisance laws, as part of neighbour law, establish rules and guidelines for the use of a property so as to balance the rights and interests of neighbouring owners. They aim to mediate conflicts where competing interests arise. Any sound that disrupts or has the potential to disturb the peace and comfort of a reasonable person – such as church bells, calls to prayer, musical instruments, or sound amplifiers – may qualify as a noise nuisance. These nuisances may be regulated through national, provincial, or local noise control laws and bylaws.

Religious practices such as liturgical bell ringing or calls to prayer present a clear conflict between rights. On the one hand, residents have the right to enjoy their property free from intrusive noise. On the other hand, religious institutions and their members have the right to express their faith publicly as part of the collective right to freedom of religion. In such cases, regulation serves as a means to balance these conflicting rights, ensuring that neither interest disproportionately infringes on the other. As Krishnaswami (1960:33) stated:

Regulation by public authorities of the use of symbols, bells, musical accompaniments and amplifiers associated with a religion or belief may be necessary in order to preserve peace and tranquillity, particularly in localities where people of different faiths reside.

It has been argued that when public authorities “prohibit or limit the wearing of certain apparel, the use of bells or musical accompaniments, or the display of symbols associated with a religion or belief, such a prohibition may, in fact, prevent the observance or exercise of an essential and often obligatory part of a religious practice, or at least an established custom” (Krishnaswami 1960:33). Religious symbols and instruments are central to cultural and religious practices and should be regulated by the government in a way that respects the right to freedom of religion.

This paper outlines the principles of neighbour law, focusing on nuisance law as it relates to religious practices such as bell ringing and calls to prayer within the context of religious freedom in South Africa. It also reviews the legislative framework for controlling noise nuisances. Through various examples, I highlight principles for the reasonable use of land, noting that excessive noise, such as bell ringing, should not unreasonably impact the use and enjoyment of neighbouring properties. While religious practices like bell ringing and calls to prayer are subject to noise control regulations, legislation should consider the religious needs of the community.

## **2. Neighbour law and the meaning of “nuisance”**

The legal principles applicable to neighbours of property and land are often referred to as “nuisance” principles, derived from English law and involving “the

repeated unreasonable use of land by one neighbour at the expense of another” (Van der Merwe and Olivier 1989:507). Nuisance, in general, also refers to hurt, harm or injury and is often associated with that which causes inconvenience, discomfort, annoyance, vexation or harm.

South African law distinguishes between different types of nuisances, some of which are more relevant than others in the context of this paper. Where an act, omission or state of affairs impedes, offends, endangers or inconveniences the public at large, we are dealing with a case of “public nuisance.” Where the same state of affairs materially inconveniences another person in the ordinary comfortable use or enjoyment of land or premises, it is a case of “private nuisance.” Where national legislation, regulations or bylaws have declared a condition or a state of affairs to be a nuisance, this is an instance of “statutory nuisance” (Church 2016:para 163). This paper examines church bells and calls to prayer in the context of a private and statutory nuisance.

Where the rights of neighbours are concerned, certain important principles have developed over the years. As a general rule, property owners may use their property as they see fit, as long as they act within the bounds placed on them by the law and with the necessary consideration of their neighbours’ interest. The property owner’s right of ownership must always be weighed against the interest of others. Although the basic principle is still one of wrongfulness, reasonableness and fairness are important factors in determining whether conduct is wrongful (Neethling and Potgieter 2015:125).

With regard to nuisance, a similar weighing of interests is required, taking into account all the relevant circumstances. A “disturbing noise” is a typical example of a nuisance. As early as the case of *Holland v Scott* (1881-1882:327), Judge Shippard stated:

I take it the law is this: that a man is entitled to the comfortable enjoyment of his dwelling-house. If his neighbour makes such a noise as to interfere with the ordinary use and enjoyment of his dwelling-house, so as to cause serious annoyance and disturbance, the occupier of the dwelling-house is entitled to be protected from it.

According to Van der Walt (2010:259), neighbour law further distinguishes between nuisances in a narrower and wider sense. In a narrow sense, a nuisance such as loud noise interferes with a neighbour’s use and enjoyment of the land and is sometimes referred to as an “annoyance.” The remedies for this type of nuisance aim to prevent infringements (typically through interdiction) or to put an end to continuing infringements. In the wider sense, a nuisance causes actual harm or damage.

The typical remedies for a private nuisance are an interdict, an abatement order or an action for damages. An interdict seeks to prevent or stop a nuisance, and it may direct the offender to take positive measures to abate the nuisance. The provisions for obtaining an interdict in cases of common-law nuisance require that the applicant prove “a clear right, injury actually suffered or reasonably apprehended, and the absence of effective protection by any other ordinary remedy” (Van der Walt 2010:265-266). Where an applicant can prove that the nuisance is contrary to or in conflict with a statutory provision (such as national or provincial laws, regulations or bylaws), an abatement order is one of the simplest ways to resolve the matter (Van der Walt 2010:265). Administrative authorities are authorised, by applicable noise control regulations or municipal bylaws, to order property owners to abate nuisances upon their properties.

### 3. Reasonableness and harm

With reference to the case of *Regal v African Superslate* (1963), the court in *De Charmoy v Day Star Hatchery* (1967:191F-G) considered the position of South African law regarding nuisances. According to the court:

The principle in our law is this: although an owner may normally do as he pleases on his own land, his neighbour has a right to the enjoyment of his own land. If one of the neighbouring owners uses his land in such a way that *material* interference with the other's rights of enjoyment results, the latter is entitled to relief. (emphasis added)

South African neighbour law expects a neighbour to tolerate a “reasonable level of interference resulting from the use of neighbouring land” (Van der Walt 2010:262). Only when the interference exceeds the level of “reasonableness” does it become unlawful and thus an actionable nuisance. This type of noise nuisance, in the form of loud and annoying church bells or other types of religious noise, has been the source of numerous disputes and much unhappiness in neighbourhoods. The principle is thus that any use of land (such as a church or mosque) that causes excessive vibrations or noise (in the form of church bells or the call for prayer) “that in any other way infringes the normal use and enjoyment of neighbouring land, in an ongoing and unreasonable manner, constitutes a nuisance in the narrow sense, which is unlawful and could therefore be interdicted” (Van der Walt 2010:263). Whether an interference exceeds the toleration expected of neighbours and is thus unreasonable is a contextual question and requires an assessment of the gravity of the harm suffered (Church 2016:para 174; Van der Walt 2010:263). Relevant contextual factors include:

the suitability of the respondent's use of the property; the extent of the interference; the duration of the interference; the time or times at which the interference was caused; the sensitivity of the plaintiff to the particular immission or in general; the nature of the property and the nature of the locality where the harm was caused or where it occurred and the custom with regard to land use in that locality; and the possibility and practical or economical feasibility of actually preventing, terminating or mitigating the harm. (Van der Walt 2010:272-273)

In relation to the suitability of the plaintiff's use of the property, typical religious practices such as the ringing of church bells or singing of hymns may be normal for a property used for religious purposes but not for property earmarked as residential. With reference to the measure or extent of the interference, the harm suffered must be "material" or "substantial" to be considered unreasonable and not merely trivial. The test of the materiality of the harm is "objective and is expressed as the test of what a normal person residing in the locality would consider to be an excessive or intolerable interference" (Church 2016:para 176). In the words of the court as expressed in *De Charmoy v Day Star Hatchery* (1967:213):

The test, moreover, is an objective one in the sense that not the individual reaction of a delicate or highly sensitive person who truthfully complains that he finds the noise to be intolerable is to be decisive, but the reaction of "the reasonable man" – one who, according to ordinary standards of comfort and convenience, and without any peculiar sensitivity to the particular noise, would find it, if not quite intolerable, a serious impediment to the ordinary and reasonable enjoyment of his property.

The duration of the interference, as well as the different types of sound, is also an important consideration. Interferences that are merely momentary or temporary might not be considered unreasonable unless they occur with some regularity (Church 2016:para 178). There are different types of sounds; for example, continuous sounds have little or no variation over a duration of time, whereas other sounds may vary in intensity. Intermittent sounds, such as church bells, are interspersed with quiet periods; impulsive sounds are characterised by relatively high sound levels over a very short duration of time.

According to guidelines posted by the City of Cape Town (Guidelines), long-lasting, high-level sounds can disturb or even damage people's sense of hearing and are also generally the most annoying. Although intermittent and impulsive

sounds appear less damaging to hearing, they tend to be annoying because of their unpredictability. In *Gien v Gien* (1979), the court found that the respondent acted unreasonably and unlawfully when he installed an apparatus that emitted gas explosions every two minutes, day and night, to keep baboons away from a vegetable garden. It is thus clear that the duration, time of occurrence, and level of the noise determine its effects.

With regard to the time of an interference, a noise that is reasonable at mid-day might be unreasonable at midnight. For instance, the ringing of bells “during ordinary working hours is unlikely to be considered a serious interference with the comfort of human existence” (Church 2016:para 179). In *Die Vereniging van Advokate (TPA) v Moskeplein* (1982), an interdict was granted against a contractor for construction noise that was bearable during the night but unbearable during the day for advocates in adjoining offices, who could not conduct their normal business activities. With regard to the sensitivity level of the plaintiff, the standard of the ordinary person living in the specific locality is generally used to judge the gravity of the harm (Church 2016:para 180).

The last factor relates to the possibility as well as the practical or economic feasibility of avoiding or mitigating the harm. The harm may be considered less grave where it might have been avoided by “minor expenditure or similar precautionary action on the part of the complainant” (Church 2016:para 181). In *Regal v African Superslate* (1963), it was argued that certain necessary steps to prevent the repetition of a nuisance were excessively costly and not reasonably feasible. However, in *Gien v Gien* (1979), a sound apparatus that caused noise nuisance could easily be switched off during the night or even muffled.

Relevant factors and circumstances will vary from case to case. Specifically, in relation to the ringing of church bells, the Legal Advisory Commission of the General Synod of the Church of England has highlighted certain relevant factors that will be taken into account by a court. These include the “duration of the bell ringing, the time of day the bells are rung, the purpose for which the bells are rung, and the frequency of the ringing. Of course, the volume of noise created by the bells will be a key factor (and reliable measurements should assist the Court” (Legal Advisory Commission 2008:2). The court will also consider volume together with all the other relevant factors in light of the particular locality and context.

#### 4. Legislative framework

Apart from a private nuisance in accordance with the common law as outlined above, applicable legislation, regulations and municipal bylaws can also declare a specific state of affairs to be a statutory nuisance. In this section, I briefly outline the legislative framework of statutory nuisance in South Africa.

Noise can be recognised as a form of pollution. In section 1 of the National Environmental Management Act 107 of 1998, pollution is defined as “any change in the environment caused by substances; radioactive or other wastes; or *noise* and where that change has an adverse effect on human health or wellbeing” (emphasis added). There are numerous sources of noise, such as industrial, transportation-related, building and domestic noise. Religious activities, such as the ringing of church bells, calls to prayer, and religious festivals and gatherings may fall under this heading, and they are often the subject of noise and nuisance complaints.

In South Africa, legislative and executive authority is divided among national, provincial and local governments. The authority to legislate on noise pollution rests solely with provincial legislatures and municipal councils. In 1992, the Minister of Environment Affairs issued noise control regulations under the Environment Conservation Act 73 of 1989. Since 1996, provinces have taken responsibility for these regulations, enacting their own noise control laws under Schedule 5 of the Constitution. Matters such as “nuisance” and “noise pollution,” listed in Part B of Schedule 5, fall within municipal legislative authority, with oversight from provincial governments. Accordingly, municipalities have implemented various noise and nuisance bylaws.

The Western Cape Province introduced the Western Cape Noise Control Regulations under the Environment Conservation Act 73 of 1989, as amended (PN 200/2013), on 20 June 2013. These regulations, like others, differentiate between “disturbing noise” and “noise nuisance.” A *disturbing noise* is objectively and scientifically measurable, based on its deviation from the existing ambient noise level. In contrast, a *noise nuisance* is subjective and refers to any sound that disrupts the convenience or peace of a reasonable person. Both forms of noise are prohibited under noise control regulations. Kidd (2005:175) argues that the reason for the distinction between types is that a disturbing noise can be objectively determined, whereas a noise nuisance is subjectively perceived. Church bells ringing every 15 minutes in a residential area may not exceed the ambient sound level by 7dBA and, therefore, may not be classified as a disturbing noise under the regulations. However, they could still disrupt or impair the peace of a neighbour, thereby qualifying as a noise nuisance even if they do not meet the criteria for disturbing noise.

Section 3 of the Western Cape Noise Control Regulations specifically bans operating or playing musical instruments, sound amplifiers, or loudspeakers that may cause a noise nuisance. It also prohibits emitting sounds through bells, alarms, whistles, loudspeakers, or devices that may disturb others. The City of Tshwane Council has also developed a Noise Management Policy, which was informed by the Gauteng Noise Control Regulations. It acknowledges that certain activities, like the regular ringing of bells or a muezzin calling from a mosque, are socially acceptable in any

well-functioning community but may sometimes be intrusive to individuals or groups living near the noise source. According to the policy, these activities:

must be accepted by all as a healthy aspect of our urban community life, albeit as diverse groups and individuals within a community, but with the proviso that such activities are undertaken at reasonable times and are not excessively disruptive to other essential/normal activities or to the point of being a health hazard. (City of Tshwane 2004:32)

These activities must still be conducted in a reasonable manner, and therefore the policy provides further:

Unless there are numerous and widespread complaints, unless the noise levels are excessively loud and incidents take place at unreasonable times (i.e. during the night) and unless complainants (persons affected) can justify the exact nature of how they are disturbed, then the community activities should be allowed. (City of Tshwane 2004:32)

Rights and values often conflict and must be carefully weighed, balanced and, at times, limited. In the context of religious noise nuisances, it is essential to establish a balance between the exercise of religious practices and the right to peace and quiet in residential areas. The following section explores how to strike an appropriate balance between these competing rights and interests.

## **5. Freedom of religion and striking a balance**

Whether the ringing of bells or the call to prayer constitutes a nuisance must be evaluated with respect to religious freedom while also considering that religious expression is not unlimited. Section 15 of the Constitution provides broad protection for religious freedom, encompassing individual and collective rights. In addition, section 31 guarantees the right of individuals to practice their religion as part of a community. These provisions recognise that the right to hold religious beliefs is inseparable from the right to express and practice those beliefs. This includes private and public, as well as individual and communal, acts of worship or observance. Religious expressions such as music, church bells, and calls to prayer are ways in which believers manifest their faith, and these practices are protected under section 15, in conjunction with section 31, which affirms the rights of religious communities to practice their beliefs collectively.

The collective dimension of the right to manifest religion or belief is particularly significant, as state intervention to regulate or restrict religious manifesta-

tions is more likely to occur when these expressions are carried out “in community with others” rather than practised individually (Krishnaswami 1960:21). The Muslim call to prayer (adhan or azan), church bells during divine service, and liturgical bell ringing are legitimate expressions of religious belief. Moosa (2021:24) highlights that the adhan serves primarily a spiritual purpose, functioning as a reminder for Muslims to heed the call to prayer rather than compelling them to do so. The volume of the adhan does not determine the strength of a Muslim’s faith, and mosques that refrain from using loudspeakers or microphones continue to fulfil their religious role effectively.<sup>2</sup> Similarly, the regular ringing of church bells for religious purposes should not be regarded as a significant burden on the public but as a socially acceptable practice. As such, church bells may continue to be used as part of divine services, serving their traditional role in religious observance. An example of religious practices involving bell ringing can be found in canon law. In England, bell ringing is not only part of ecclesiastical law but also of the canon law of the Church of England. For instance, Canon F8 addresses the use of church bells, while Canon B11 pertains to the ringing of bells in relation to morning and evening prayer. These canons highlight the significance of bell ringing as an integral part of religious observance within the church.

The Legal Advisory Commission of the General Synod of the Church of England advises and publishes statements on non-contentious legal matters of general interest to the church (Legal Advisory Commission 2008). The commission holds the view that where clergy are required to ring the church bells – or at least one of them – as demanded by ecclesiastical law (such as to call the parish to public worship), they will have a valid defence against an action alleging private nuisance. According to the commission, “If canon law has directed a particular activity, there can arguably be no liability for nuisance caused thereby. This defence is likely, however, to be limited only to what would be strictly necessary to discharge the canonical obligation” (Legal Advisory Commission 2008:2). However, the chiming of a clock would not fall within these provisions, and ringing the bell or bells on other occasions might be treated differently. It may be customary to ring church bells after a wedding, at festivals, to mark national thanksgivings, or to indicate the time of day. However, if such ringing interferes with a person’s use and enjoyment of his property, it can constitute a nuisance at common law.

In Germany, the ringing of church bells is regulated by the Federal Immission Control Act. As long as the noise constitutes liturgical bell ringing in the traditional way, it does not constitute a burden to the public, and it is seen as a “socially

2 For an overview of the religious origin and purpose of the adhan in South Africa and its possible status as a protected cultural heritage symbol, see Moosa (2021).

adequate immission” (Robbers 2005:885). However, courts have found that the ringing of church bells to indicate the time of day “must be somewhat less loud.” A similar approach has been taken in relation to the Muslim call to prayer. The muezzin call has been found to be legally acceptable, subject to the fact that when it is intensified by loudspeakers, the legitimate needs of neighbours must be taken into account. Accordingly, it has been held that:

liturgical bell ringing, muezzin calls, or else are not exempt from noise laws, but the noise laws and their application have to take into account adequately the religious needs. The government has to find an adequate balance of all needs concerned (Robbers 2005:886).

While this paper focuses on South Africa, religious noise is a challenge across the African continent, particularly in densely populated countries like Nigeria, which boasts one of the largest concentrations of churches globally, along with a significant number of mosques. Key religious activities identified as sources of noise nuisance in Nigeria include vigils, Christian morning cries, Muslim calls to prayer, daily Christian programs, and general noise from worship centres. Views on this issue differ. Some advocate for absolute freedom of religion, arguing that government or legal authorities should not interfere in religious matters. Others believe that religious activities should be regulated to prevent disruptions to public order (Ekhatior 2023:74). A balanced approach suggests that when religious practices become a public nuisance, appropriate legal regulation is necessary. Any disputes arising from such regulation should be resolved with fairness and justice. No fundamental right, including freedom of religion, is absolute. In South Africa, the Constitution allows for limitations to these rights, provided that such limitations are reasonable and justifiable in an open, democratic society based on human dignity, equality, and freedom. The regulation of religious practices, such as bell ringing, may be necessary to maintain peace and tranquillity, especially in areas with diverse faith communities. In the case of church bells ringing to indicate the time of day, the sound should be less intense, as it serves a social rather than strictly religious purpose. This type of ringing could potentially constitute a noise nuisance, subject to regulation under applicable noise control regulations and bylaws.

It has been argued that where certain acts causing a nuisance have been performed in the exercise of constitutional rights, “the private law of nuisance must be developed so as to alter the outcome of the traditional balancing exercise in a manner that permits the interference” (Du Bois and Reid 2004:598-599; Van der Walt 2010:314). The argument is thus for a shift in the

traditional approach to nuisance, more particularly a development of the private law of nuisance so that certain interferences (such as religious noise) would be permitted under the influence of human rights principles (such as religious freedom), “whereas they would have been proscribed in traditional nuisance balancing” (Van der Walt 2010:314). This might be achieved by, for instance, expanding the range of factors taken into account in the balancing exercise in order to include interests “sanctioned by the human rights regime” (Du Bois and Reid 2004:599).

Accordingly, nuisance provisions remain a valid and independent basis for legal challenges that can limit freedom of action as long as they do not deny the existence of other human rights-protected interests. However, both in terms of the law of nuisance or human rights law, courts will have to make a substantive decision “as to where the line has to be drawn between conflicting interests – a decision that is inescapable” (Van der Walt 2010:314). Usual or unusual practices of a religious minority or majority could still be unreasonable and constitute an actionable nuisance for neighbours.

One of the earliest such examples was *Prinsloo v Shaw* (1938), where the applicant was the owner and occupier of a house in a residential quarter of East London, and the respondent was the leader of a religious body known as “The Latter Rain Assemblies.” The applicant complained that the religious services held on the respondent’s land were accompanied by:

very loud and strident singing and yelling, singing in a monotonous whine and chant, frenzied praying, stamping of feet, clapping of hands, groaning, all in such a manner that applicant and his family are seriously incommoded, disturbed, disquieted and interfered with, their comfort seriously diminished and the value of applicant’s property diminished (*Prinsloo v Shaw* 1938:571).

The question in dispute was whether the noise materially interfered with and diminished the comfort and convenience of people residing in the applicant’s house. The court held:

A resident in a town, and more particularly a resident in a residential neighbourhood, is entitled to the ordinary comfort and convenience of his home, and if owing to the actions of his neighbour, he is subjected to annoyance or inconvenience greater than that to which a normal person must be expected to submit in contact with his fellow-men, then he has a legal remedy (*Prinsloo v Shaw* 1938:575).

A final interdict was granted against the respondent, not because the religious services were unusual for the area, but because they were held “at such times and in such manner as to constitute a nuisance” (572; 575).

More recently, the Zeenatul Islam Masjid, located in District Six of the City of Cape Town, has asked the city to exclude calls to worship from the noise control regulations and bylaws. They argued that the:

different calls to worship by mosques, churches and other places of worship [are] integral to the fabric of District Six and this diversity has spread to the rest of the world. Cape Town – the birthplace of Islam in South Africa 325 years ago – prides itself as an embracing city of many cultures and faiths. The [adhan] needs to be understood in this context. (Richardson 2019)

This request came after numerous complaints were lodged against the Cape Town mosque on Muir Street, claiming that the adhan constituted a noise nuisance. However, the Muir Street Mosque committee contended that the adhan or any other call to prayer can never be regarded as disruptive noise (The Voice of the Cape FM 2019). The key issue at hand is whether the specific “religious noise” is reasonable. Even if it complies with noise control regulations and bylaws, it may qualify as a nuisance if deemed unreasonable. Notably, the applicable legislation does not exempt religious sounds, including the call to prayer. However, the City of Cape Town has expressed a willingness to engage with communities to explore amending noise bylaws to exclude religious sounds such as the call to prayer.

Another recent case, *Ellaurie v Madrasah Taleemuddeen Islamic Institute* (2020), involved a property owner who sought a court interdict against his neighbour, the Islamic institute. Mr. Ellaurie, whose house was across the street from the madrasah, complained that the call to prayer could be heard from his property, disturbing his peace and quiet. He argued that the noise deprived him of the enjoyment of his property. The case raised issues of noise nuisance and the balance between religious practices and the right to peace and quiet in residential areas. The High Court in Durban granted the requested interdict. The court ruled that the constitutional right to freedom of religion does not extend to practising religion in a manner that includes the public broadcast of the call to prayer. It emphasised that neighbours have the right to enjoy their residential properties peacefully, and that this right must be respected by others, including places of worship such as mosques. The court further determined that the neighbour had proved that the call to prayer infringed upon this right. As a result, it granted an interdict requiring the mosque to ensure that the call to prayer could not be heard by the neighbour.

In an opinion published in *The Conversation* (Van Coller 2020), I argued that the court's decision in this case was flawed for several reasons. It prioritised the neighbour's right to use and enjoy his property without giving sufficient consideration to the reasonableness of the alleged disturbance. Specifically, the court did not thoroughly evaluate whether the mosque was acting within its rights and behaving reasonably. It also failed to consider the constitutionally protected right of individuals to practise their religion, including the call to prayer. Additionally, the court overlooked the city's existing noise control regulations, which should have been taken into account when assessing the case. In relation to section 15 of the Constitution, Judge Mngadi incorrectly held that this provision "guarantees freedom of religion, it does not guarantee practice or manifestations of religion. The Call to Prayer is a manifestation of the Islam religion, it is not Islam itself" (para 16). This view goes against numerous Constitutional Court judgements that have acknowledged that the right to freedom of religion includes the right to manifest such beliefs by worship and practice, teaching and dissemination.<sup>3</sup> The decision was also criticised by Moosa (2021:12), who stated that "the Judge also confuses the integral role of the adhan in Islam and fails to draw a distinction between the status of the unamplified and amplified adhan in Islam."

The madrasah appealed to the Supreme Court of Appeal (SCA), which upheld the appeal. In *Madrasah Taleemuddeen Islamic Institute v Chandra Giri Ellaurie* (2023), the SCA confirmed that the test for assessing the impact of a noise is whether it could be considered "reasonable" given the circumstances and context in which the interference occurred. For Mr. Ellaurie to succeed in his interdict application, he had to prove that the madrasah's actions unreasonably interfered with his established right to the use and enjoyment of his property. The court emphasised the need to balance the rights of both parties while considering the reasonableness of the alleged disturbance (*Madrasah Taleemuddeen* 2023:para 11). The court found that Mr. Ellaurie failed to adequately explain the nature and volume of the noise produced by the adhan, nor did he provide evidence of what would constitute a reasonable adhan in the given circumstances. Contrary to the High Court's findings, the SCA held that the right to freedom of religion, protected under section 15 of the Constitution, includes the right to observe and manifest religious beliefs. The court emphasised that a determination of the reasonableness of the alleged interference with Mr. Ellaurie's rights must also consider these competing rights (*Madrasah Taleemuddeen* 2023:paras 16-18).

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3 The South African Constitutional Court has confirmed this view on numerous occasions. See *Christian Education* (2000); *Prince* (2002); *S v Lawrence* (1997).

This approach is more aligned with the view of South Africa's Constitutional Court, which has affirmed that the Constitution requires society to affirm and reasonably accommodate differences, rather than merely tolerate them as a last resort (*MEC for Education, KwaZulu-Natal and Others v Pillay* 2008). It has emphasised that the Constitution is founded on the values of tolerance, diversity and equality, and that accommodating the country's rich variety of religions aligns with these fundamental commitments. According to the Constitutional Court, the principle of reasonable accommodation in matters of religion requires that the state or community must take positive measures and, if necessary, bear additional hardship or expense to ensure that all people can participate fully and enjoy their rights equally. This principle ensures that individuals are not pushed to the margins of society simply because they do not or cannot conform to prevailing social norms (*MEC for Education* 2008:para 73). Sections 15 and 31 of the Constitution recognise that the right to hold religious beliefs is inseparable from the right to express and practice those beliefs. This includes private and public, as well as individual and communal, acts of worship or observance.

## 6. Conclusion

This paper has emphasised the importance of the right to manifest and practise one's beliefs as a core part of religious freedom. The South African Constitution, alongside other laws, guarantees this right, protecting both private and public religious observance. Practices such as church bells, chimes, and the call to prayer must be conducted with respect for others' rights, promoting peaceful coexistence in a diverse society. While religious expressions such as bell ringing and calls to prayer are subject to noise control regulations, these laws should be applied sensitively to the community's religious needs.

With regard to calls to prayer, Moosa (2021:24) argues that mosques play a crucial role in fostering good neighbourly relations by educating the surrounding community about the purpose and significance of the adhan in Muslim religious practice. Such efforts can help to build understanding, reduce misunderstandings, and prevent unnecessary lawsuits or complaints that may stem from possible or perceived Islamophobia. Legislation should balance competing rights, ensuring that religious practices comply with laws while respecting religious freedoms. As Krishnaswami (1960:31-32) pointed out:

Thus while public authorities may legitimately regulate the exercise of the right to freedom of worship "in community with others" and "in public" in the general interest, taking account of rival demands, it must be affirmed that as a general rule everyone should be free to worship in

accordance with the prescriptions of his religion or belief, either alone or in community with others, and in public or in private; and that equal protection should be accorded to all forms of worship, places of worship, and objects necessary for the performance of rites.

The Constitutional Court (in *Prince v President, Cape Law Society* 2002) affirmed the universal right to choose one's religion, the right to openly practise one's faith, and the freedom from interference in observing or expressing religious beliefs. This position was further affirmed by the Supreme Court of Appeal in *Madrasah Taleemuddeen Islamic Institute v Chandra Giri Ellaurie* (2023), which emphasised that the core of the right to freedom of religion lies in an individual's entitlement to hold religious beliefs of their choice, to express those beliefs openly without fear of interference or reprisal, and to manifest them through worship, practice, teaching (para 17). Religion is dynamic, requiring rituals and practices to evolve in response to changing circumstances. Striking a balance between the right to freedom of religion, its public expression, and the need for inclusivity and legislative regulation is a complex task. The government must carefully consider and address these competing needs. The preamble of the South African Charter of Religious Rights and Freedoms emphasises that with rights comes the duty to respect the rights of others. When one exercises those rights – whether it is the freedom of religion or the public expression of those beliefs, such as through church bells or calls to prayer – it is essential to act within the bounds of the law and uphold ethical principles. Fairness, reasonableness and tolerance should guide all actions to foster harmony in a diverse society.

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