

A PAPER PRESENTED AT THE COLLOQUIUM ON INTEGRATING ENVIRONMENTAL LAW TRAINING IN THE JUDICIARIES IN AFRICA, JOHANNESBURG SOUTH AFRICA, 25TH TO 27TH JANUARY 2017

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THE LEGAL REGIME GOVERNING ENVIRONMENTAL MANAGEMENT IN UGANDA'S PERSPECTIVE

The Constitution of the Republic 1995 as amended is the primary legal tool guiding environmental management in Uganda.

Under the National Objectives and Directives principles of state policy, Principal No.XXvii, it's provided that:

- i) The state shall promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations.
- ii) The utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of the present and future generations of Ugandans and in particular the state shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes.
- iii) The state shall promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met.
- iv) The state including local governments shall:
 - a) Create and develop parks, reserves and recreation areas and ensure the conservation of natural resources.
 - b) Promote the rationale use of natural resources so as to safeguard and protect the biodiversity of Uganda.

Under Principle X111, the state is mandated to protect important natural resources including land, water, wetlands, oil, fauna and flora on behalf of the people of Uganda and under principle XX1, the state has to take practical measures to promote a good water management system at all levels.

The constitution further guarantees the right to a clean environment to every Ugandan under Article 39 and under Article 245 where it is provided that Parliament shall by law provide for measures intended to protect and preserve the environment from abuse, pollution and degradation, manage the environment for sustainable development and promote environmental awareness.

Parliament under its legislative mandate enacted the National Environment Act which basically deals with the management and sustainable use of the environment. That Act under section 4 establishes the National Environment Management Authority which is the principal agency in Uganda for the management of the Environment which body coordinates monitors and supervises all activities in the field of the environment.

In that vein therefore, the National Environment and Management Authority has undertaken measures intended to protect the environment from destruction. A survey conducted by the Authority shows that the public is aware of environmental related matters but literacy and responsiveness is very low which partly contributes to the bad state of the environment. The results indicated that 90% of the Uganda's population directly or indirectly depends on products of the environment, 68% of the population derives their livelihood directly from the environment, 94% of Uganda's energy is from the environment and the environment is a major employer of the labour force accounting for about 90% of direct employment.

Despite the existing legal regime and an Authority mandated to manage environmental related matters, human activity has not spared the environment which activities have led to environmental degradation. This has arisen mostly through:

- Rapid and unregulated population growth which has led to a strain on available natural resources.
- Economic activities especially on wetlands, forests and game reserves which have been reclaimed for agricultural and pastoral activities.

The National Environment and Management Authority has in its efforts to conserve the environment undertaken sensitization measures to members of the public on environmental preservation. To some extent, there has been compliance but there remain some gaps that adamant members of the public take advantage of and as such cause environmental degradation. Consequently, the Authority has in some instances sought legal redress in the courts of law to ensure compliance. The courts have in most cases meted out restorative orders but to some extent, implementation has not been effective.

THE ROLE OF THE JUDICIARY IN RESOLVING ENVIRONMENTAL DISPUTES.

The courts as established under the law play a neutral role of adjudication over matters that have been brought before them. In this respect therefore, a number of cases have been filed in the Ugandan courts and the courts have to a large extent made pronouncements in such cases which are basically intended to preserve and protect the environment.

The Uganda Judiciary has recently established a specialised court that is intended to deal with environmental related matters. The Chief Justice under his constitutional mandate under Article 133 of the Constitution established a Utilities, Wildlife and Standards court which came into effect by virtue of Legal Notice No.12 of 2015 and among the issues the court is to deal with are those related to the environment.

In addition to the above, the National Environment and Management authority on the 14th September 2016 in collaboration with Justice Law and Order Sector (JLOS) and the Judicial Studies Institute organised a colloquium to engage actors in the JLOS sector to identify their roles in ensuring access to

environmental justice, identify bottlenecks and work out an actionable way that is intended to protect and preserve the environment.

A number of recommendations were made that are intended to preserve the environment which included among others:

- The Judiciary to be more pro-active in their role of adjudicating environmental cases.
- Train and groom mediators in environmental law.
- Come up with community policing mechanisms on all forms and issues of pollution and environmental degradation.
- Efforts in environmental restorative measures should be non-discriminatory.
- Promote appropriate technologies and emphasize safety measure for potential environmental hazards.
- Increase environmental literacy for understanding the linkages between the environment.
- Strengthen National, Regional and Global Partnerships and Network for sustainable development.

RESOLUTION OF ENVIROMENT DISPUTES

1. ENVIROMENTAL LITIGATION.

Litigation is one of the major ways through which environmental disputes are resolved. These include Civil and Criminal litigation regimes. This paper will focus on the Civil Litigation aspect.

In civil litigation an aggrieved person or persons seek redress from court. This can either be private interest litigation or public interest litigation. There are several cases where private individuals have brought matters before court for the infringement of their personal environmental rights. The Constitution of the Republic under Article 50 (1) allows for public interest litigation. A number of cases on the protection of the environment have been decided by Ugandan courts under public interest litigation.

On the other hand, criminal litigation is a state initiated process of punishing or penalizing offenders. The state or state body comes before court to prosecute individuals who are in infringement of the law. Part 8 of the Environment Act Cap 153 of the Laws of Uganda for example provides for offences and penalties. Ugandan courts come in to assist in the resolution of disputes brought before it, law enforcement and to ensure that justice is served.

2. MEDIATION

In Uganda, The Civil Procedure Act (Cap. 71) and the Civil Procedure Rules S.I 71-1 Order XII (12) of the Civil Procedure Rules provides for Mediation as a form of alternative dispute resolution.

It is a process in which negotiations between the disputing parties are facilitated by a third party, the Mediator, who assists the parties in resolving their differences.

The different divisions of the High Court of Uganda have a Mediation Chamber and Registry. It is mandatory for Parties to pursue and appear before a Mediator before a dispute can be litigated upon by a Judge if the parties fail to resolve the dispute at that stage.

The largest part of land in Uganda is held under customary land tenure system hence Traditional Mediators under are recognized under the Land Act. Sections 88 and 89 thereof provide for Customary Dispute Settlement and Mediation.

3. ARBITRATION.

Arbitration is provided for in the Arbitration and Conciliation Act Cap 4 of the Laws of Uganda. It is defined in the Act to mean any arbitration whether or not administered by a domestic or international institution where there is an arbitration agreement. The Judicature Act Sections 26 to 32 and Section 41 provides for Alternative Dispute Resolution under Court's direction. The Act also provides for the Centre for Arbitration and Dispute Resolution

(CADER) as a Statutory Institutional alternative dispute resolution provider. Courts can interfere with an award in arbitration where it is only considered necessary in the interest of justice.

Case ref: Oil Seeds (Uganda) Limited Vs Uganda Development Bank 1 Supreme Court Civil Appeal No. 203 of 1995 & Rashid Moledina & Co. (Mombasa) Ltd & 16 (1967) EA 645.

4. CONCILIATION.

This form of Alternative Dispute Resolution is provided for under part 5 of the Arbitration and Conciliation Act.

A Conciliator assists the parties to a dispute to find a solution, but has no power to enforce it. The Act provides the framework under which the Conciliator plays his role.

It states in section 53 that: “ The Conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute. The conciliation proceedings are rather conducted informally and a Conciliator acts in the best manner that he deems fit.

CHALLENGES FACED IN RESOLVING ENVIRONMENTAL DISPUTES.

1. Poor enforcement of court orders and laws that are put in place.
2. Weak environmental government institutions.
3. Inadequate financial resources.
4. Luck of a specialized environmental tribunal or court.
5. Political interference in the enforcement of court orders and laws.
6. Inadequate sensitization of the public on environmental laws.

7. There are limited grounds under Section 34 of the Arbitration and Conciliation Act upon which a person can challenge an arbitration award.
8. Conciliation like mediation has no binding power on the parties and does not always lead to an outcome.
9. Lack of proper rules governing public interest litigation.
10. Parties are reluctant to opt for alternative dispute resolution; Majority prefer Adversary court litigation.
11. Poor case flow management.
12. High costs of litigation.
13. Limited Judicial Activism.
14. Courts over rely on technicalities in adjudication of matters.
15. Because of the laxity involved in arbitration, the element of mutual respect of the arbitration process can sometimes be lacking as opposed to litigation where the disputing parties are obliged by law to respect court procedure inclusive of attending hearings.

THE ROLE OF THE JUDICIAL TRAINING INSTITUTE AND RECOMMENDATIONS

It is clear from the above discussion that there is urgent need to establish a body that spear heads sensitization, training and monitoring of training activities of all stake holders in matters of Environment Preservation and administration of Environmental Legal regimes. The Judicial Training Institutes would play such a central role.

As the Uganda Judiciary, we have taken issues of the environment seriously and together with the lead agency the National Environment Management Authority in ensuring that the public is made aware of the benefits that arise from environmental protection. The recent Colloquium on Access to

Environmental Justice and Compliance is the best example I can give in that respect. We should therefore understand that issues of the Environment are of a global concern and this can be evidenced by the several International conferences held in regard to environmental protection. Let us be proactive in our efforts to save the Environment.

The following are recommended prerequisites for enabling Judicial Training to take that central role.

1. Give Legal and Independent status to Judicial Training Institutes. This would of course involve proper funding and clear terms of reference.
2. Strengthen other Environment stakeholder institutions through increased funding.
3. Creation of specialized and well facilitated tribunals or courts to tackle environmental matters.
4. Sensitize Judges and other judicial officers on environmental issues.
5. Improve the review and enforcement of environmental laws.
6. Jurisdiction of courts in environmental matters should extend to all courts other than the High Court alone.
7. Put in place measures to allow quick adjudication of environmental disputes.

CONCLUSION

It is imperative to note that man largely depends on the environment to survive. Different stakeholders should play their respective roles to ensure that preservation of the Environment is achievable.

Judiciary is the last resort where the public has to run to in case of environmental abuse by other players. As courts, we play a significant role since matters of the environmental safeguard are not merely business issues

but justice issues too. The Judiciaries have a fundamental role in interpreting laws to ensure that matters arising out of environmental concerns are delicately but properly handled.

The Judicial training Institutes should take the lead in training Judicial Officers and other stakeholders in environmental matters. As the Judicial Studies Institute in Uganda, we have already undertaken this noble call and work is in progress.

Thank you for listening to me.

**HON. JUSTICE GODFREY NAMUNDI
HIGH COURT JUDGE.**

**SAMPLE OF DECIDED CASES BY THE UGANDAN COURTS ON
ENVIRONMENTAL RELATED MATTERS:**

In Amooti Godfrey Nyakaana versus National Environment Management Authority & 6 others, Supreme Court Constitutional Appeal No.05 of 2011, the appellant was the registered proprietor of land comprised in Leasehold Register Volume 3148 Folio 2 Plot 8 Plantation Road Bugolobi, Kampala for which he applied and acquired the necessary approval from Kampala Capital City Authority for construction of a residential house which he commenced. In 2004, environmental inspectors from the first respondent carried out an inspection of Nakivubo Wetland located in Nakawa Division and according to the inspectors, the house was found to be in a wetland. A meeting was held between the first respondent and the appellant in which the appellant was advised to halt construction to which he refused to pay heed. The first respondent then issued a restoration order which required the appellant to demolish the house within 21 days to which he refused and consequently the first respondent demolished the building forcing the appellant to file Constitutional Petition No.03 of 2005 challenging the Constitutionality of Sections 67, 68 and 70 of the National Environment Act. After the hearing of the Petition, the Constitutional Court ruled in favour of the respondent and being dissatisfied with the decision of the Constitutional court, the appellant lodged an appeal to the Supreme Court on eleven grounds which I need not reproduce here but the most prominent being that the learned Justices of the constitutional Court erred in law and fact when they preceded to decide the matter on the premise that the appellant's land was a wetland and by demolishing his house, the first respondent deprived the appellant of his guaranteed constitutional right of owning property.

Dismissing the appeal, the Supreme Court noted:

"but article 43 of the Constitution requires that in the enjoyment of their rights and freedoms, persons do not prejudice the rights and freedoms of others. Laws like the Land Act or the National Environment Act are specifically provided for in the Constitution to help ensure that when people exercise their rights over their property, they do not prejudice the rights of others or the public interest. This is what could conceivably happen if one obstructed a stream or

wetland. Other persons would be affected either by suffering floods or drying up water sources. This must be addressed under the National Environment Act.this is instrument that the state has to use to protect the environment from abuse, pollution and degradation. A person cannot degrade a wetland and cause pollution to other citizens simply because he owns the land. This would defeat the whole purpose of the constitution which requires that citizens may own land, but not cause pollution or degradation of the environment which may affect other people and the country as a whole”.

In Green Watch versus Attorney General and National Environment Management Authority, Miscellaneous Cause No. 140 of 2002, the applicant filed an application seeking for orders that the manufacture, distribution, use, disposal of plastic containers, plastic food wrappers and all other forms of plastic commonly known and referred to as ‘Kaveera’ violates the rights of citizens of Uganda to a clean and healthy environment, an order banning the manufacture, use, distribution and sale of plastic bags and plastic containers of less than 100 microns and that an order be issued against the respondents directing them to restore the environment to the state it was before the menace caused by plastics.

In allowing the application, the High Court noted that the manufacture, distribution, use, sale, disposal of plastic bags, plastic containers, plastic food wrappers and all others forms of plastic commonly known as ‘Kaveera’ violates the rights of citizens to a clean and healthy environment.

In Asiimwe Davis Barigye & 2 others versus Leaf Tobacco and National Environmental Management Authority, High Court Miscellaneous cause No.43 of 2013, the applicants sought for declaratory orders that their right to a clean and health environment was being violated by the respondents, that the continuous air pollution by emission of tobacco smoke, dust and smell to the environment by the respondent was a violation of the public’s right to a healthy and clean environment.

In allowing the application, court noted that the continuous air pollution through emission of tobacco smoke, dust and smell to the environment by the 1st Respondent's factory surrounded by several homesteads is a violation of the Applicants and public's right to a health and clean environment guaranteed under Article 39 of the Constitution.

The above is merely a sample of the many decided cases passed the Ugandan courts in matters related to the environment. The decisions show how sensitive the courts are to environmental and the efforts being undertaken to preserve and protect the environment. For more of these cases, visit our law reporting website of www.Uli.org for more environmental related decisions passed by the Ugandan courts