

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL SUIT No. 78 OF 2011

MAHERA AHMAD:.....PLANTIFF

VERSUS

THE EMIN PASHA LIMITED:.....DEFENDANT

BEFORE: HON. JUSTICE BENJAMIN KABIITO

JUDGMENT

The Plaintiff has brought this suit against the Defendant for a permanent injunction to restrain the defendant from perpetuating noise pollution from its premises, general damages, interest thereon at 25% from date of judgment till payment in full and costs of the suit.

The Plaintiff is a 70 years old widow of the late Dr. Ahmad and a resident for well over 20 years at Plot 3 Kyadondo, Nakasero, in the Kampala City. Dr. Musa Ahmad, the Plaintiff's son, who testified as PW2, also resides at the same plot but in a different house on the same compound.

At the hearing of this suit on 5th of June 2013, the Plaintiff withdrew the suit against the National Environment Management Authority and Kampala Capital City Authority, being the 2nd and 3rd Defendants, respectively, who were not in court, in order to have the case promptly heard against the Defendant, given the lapse of time since this suit was filed and the demand by the Plaintiff that her complaint need urgent determination, given the nature and extent of the noise pollution that was at issue.

In absence of the Defendant's representative and its counsel, and upon the court being furnished proof that the Defendant had been made aware of the hearing date, the Court granted the prayer by counsel for the Plaintiff for an interlocutory judgment to be entered against the Defendant and for the matter to proceed for formal proof.

Both the Plaintiff and her son testified in respect to the circumstances of this case.

It is the case that the Plaintiff and PW2 have established that they reside at Plot 3 Kyadondo road, Nakasero and that they have resided at this premises for well over 20 years. Adjacent to this premise, on the one side along Akii Bua road, in the same neighborhood is the Defendant that operates a restaurant, a hotel and a live band disco on particular days of the week.

What is a residential area under the law?

Regulation 9, Clause 5 of the National Environment (Noise Standards and Control) Regulations 2003 provides for the meaning of a residential or noise control zone.

It provides as follows:

"For purposes of this regulation, a residential or noise control zone means a geographical area that encompasses hospitals, schools, residential houses and other institutions that require special considerations for noise control."

In these circumstances, I am satisfied that Plot 3 Kyadondo road, Nakasero is a residential area in terms of the said Regulation that requires special consideration for noise control, given its specific use as such.

The Plaintiff and PW2 complained to the Court about the following instances of noise pollution and nuisance and its effects upon their quiet and peaceful enjoyment of their home and their rest, recreation, meditation, health and privacy over a long period of time.

- 1) The playing of loud music by the Defendant every Wednesdays, Fridays and Saturdays from about 7pm to about 11pm to midnight and occasionally even up to 1am. The witnesses attest that the noise pollution begins at about 2pm or 3pm when a live band tests their instruments till about 6pm. The witnesses attest that the music played is at its peak at about 11:30 pm, when the noise pollution is at its most offensive.
- 2) The use of a live band with speaker amplification and singing in an open environment with musical instruments playing full blast music and excessive noise levels. In such an environment, the noise and nuisance cannot be controlled.
- 3) Noise from patrons of the Defendant and use of bad language that can be heard from therevelers at the compound of the Defendant, during events.
- 4) The use of a performance stage to host the band and the singers which is of close proximity to the parameter wall that separates the Plaintiff's property to that of the Defendant's which accentuates the noise and pollution levels to the adjoining properties.

The Plaintiff was quite unequivocal and forthright in her testimony to the court regarding the problem she and her family have experienced over a period of time. She testified thus;

"I complain that I like to live in peace at my home".

"I love music but I do not like this music. I feel like suffocating and stressed out completely."

"No neighbourly consideration has been shown to us at all".

"I have been here in this country for about sixty years. I am now needy".

On account of these circumstances, the Plaintiff and PW2 have been compelled to do the following to try and resolve this matter with the Defendant and concerned authorities.

- 1) To complain to the Defendant, NEMA and KCCA about the persistent and pervasive noise pollution emanating from the compound of the Defendant over a long period of time.
- 2) To demand that the management of the Defendant stops the noise pollution in an area that has residential premises.
- 3) To demand noise abatement measures such as sound proofing to be undertaken and observed by the Defendant.
- 4) To invite the management of the Defendant to come their home and determine for themselves the level and extent of the noise pollution being complained about without success as the management has not responded to this offer to appreciate the problem and work towards resolving it.

- 5) The Plaintiff has been forced, regularly, to abandon her bedroom which faces the Defendant's premises and retreat to a room at the other end of the house away from the direction of the noise source in order to find some solace, rest and sleep. It is noted that the Plaintiff is a widow, of advanced age and clearly in the evening of her life where rest, prayer and meditation become a distinct way of life, which she cherishes and demands.
- 6) To avoid hosting of visitors at their residence on the particular days when the loud music is being played by the Defendant given the embarrassment and helplessness that the Plaintiff and her family find themselves in as hosts, in the circumstances.
- 7) To close doors and windows facing the direction of the Defendant in order to isolate and militate against the noise pollution. In respect to these measures the Plaintiff and witness have been compelled to employ fans and air conditioners to cool the house as the windows and doors have to be locked up and by so doing have incurred unnecessary expenses.
- 8) At times PW2 has been compelled to leave his house altogether and find relief and rest elsewhere and by so doing unnecessary costs have been incurred to cover such relocation. The Plaintiff testified that she cannot leave her home in any circumstances which I understood to mean that she had an emotional attachment to it as it has been a family home for a long time.
- 9) It was the evidence of PW2, which evidence had an emotional twang to it, that his father, the late Dr. Ahmad paid a price for this persistent and pervasive nuisance from the Defendant. He testified thus;

"The late Dr. Ahmad had to change his resting routine to avoid this nuisance. Dad was forced to go out of the house on Fridays and then rest on Saturdays."

It is necessary at this point to determine what the law provides to describe "Pollution", "Noise", "Disturbance" and "Annoyance" generally.

The National Environment (Noise Standards and Control) Regulations 2003 made under the National Environment Act, cap 153 laws of Uganda, describe "pollution" generally as;

"Any direct or indirect alteration of the physical,properties of any part of the environment by discharging or emitting noise so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare.....or to cause a contravention of any condition, limitation or restriction for which a license is required under these regulations."

In particular, the said Regulations describe "noise pollution" as;

"The release of uncontrolled noise that is likely to cause danger to human health, or damage to the environment."

"Noise" is defined as;

"Any unwanted and annoying sound that is intrinsically objectionable to human beings or which can have or is likely to have an adverse effect on human health or the environment."

"Disturbance" means,

"Any act or instance of interrupting the rest, calm, attention or quiet of another person."

"Annoyance" means,

"A feeling of displeasure evoked by noise, or any feeling of resentment, discomfort or irritation occurring when noise intrudes into another person's thoughts or mood or interferes with any activity being done by the affected person."

The witnesses in this case gave me a distinct impression that they had come to court as a last resort as all other attempts at resolution of this matter directly with the Defendant and with the relevant authorities had failed and that they were fed up and stressed out at the wanton disregard by the authorities to answer their pleas to intervene and stop the intrusion of their privacy and peaceful and quiet enjoyment of their home by the Defendant.

The question of reasonableness of the Defendant's conduct and lack of response in an area that is clearly residential must be considered. The case of **SEDLEIGH-DENFIELD VS O'CALLAGHAN [1940]3 ALL ER 349** considered.

This is an important case as it seeks to find a balance between the rights accruing to a residential holding and the use by its occupants and the demands of commercial property interests in a modern and developing city. It is a delicate matter but one which must be boldly addressed by this Court, the concerned civil authorities and society generally in order to come up with a workable solution as the issue of noise pollution will become a common flashpoint in this city.

The state of mind of the witnesses and the state of affairs being complained about in this case amounts to a state of extreme annoyance and disturbance within the meaning ascribed to these conditions by the cited Regulations.

I am satisfied that the Plaintiff has established a nagging noise pollution that affects her peace of mind, rest and privacy that she and others are entitled to as residents of the subject premises and one that is over and above the everyday inconveniences which are inevitable in the area in question. The user of Plot 3, Kyadondo road is clearly residential and this specific user requires special consideration by the neighbours and concerned authorities regarding noise control and abatement.

I am equally satisfied that the Plaintiff and PW2 have suffered detriment to their personal comfort and wellbeing as set out herein, owing to the said noise pollution for which they are entitled to relief to be determined and set by this court.

The Plaintiff seeks a permanent injunction to restrain the Defendant from perpetuating the nuisance complained of, general damages, interest and costs of the suit. It is my considered view that such a relief would not be appropriate and could be viewed as extreme for the court to consider and grant at this instance to restrain the Defendant in the terms envisaged. Such a measure could aggravate the relationship between the parties and not promote reconciliation between the neighbours for a lasting resolution of this matter.

An injunction of this nature should come as a last resort notwithstanding that the Defendant has acted with impunity and willful disregard to the rights of the Plaintiff and her family.

I have considered the circumstances of this case and determined that the Plaintiff is entitled to the following reliefs and orders of this court.

- 1) An order directing the Defendant , its servants, agents and contractors to comply with the provisions of Regulation 8 of the National Environment (Noise Standards and Control) Regulations ,and the Kampala City Council (Maintenance of Law and Order) Ordinance 2006 ,within 14 days from the date of this Order.
- 2) An order directing the Executive Director National Environment Authority and Executive Director, Kampala Capital City Authority to ensure observance by the Defendant , its visitors, agents, servants and contractors of the provisions of Regulation 8 of the National Environment (Noise Standards and Control) Regulations, and the Kampala City Council (Maintenance of Law and Order) Ordinance 2006 , to enforce the penal provisions of the said provisions of the law and subject the occupancy and activities of the Defendant at the said premises and of its license, to the said provisions of the law, and its requirements, within 14 days from the date of this Order.
- 3) The Executive Director, National Environment Authority and Executive Director, Kampala Capital City Authority to furnish to this court a detailed report of the enforcement measures undertaken in respect to the provisions of the laws cited herein, in respect to the Defendant,its visitors, servants, agents and contractors,and in respect to the activities conducted on its premises, and its user license, and the response of the Defendant to these measures, within 30days from the date of this Order.

- 4) The Plaintiff is entitled to pursue further action through court if the noise pollution and nuisance persist in respect to the Plaintiff and her family's enjoyment of their premises, notwithstanding the orders of the court issued and if there is willful and verifiable disobedience of the orders issued herein or if the concerned authorities named herein fail, ignore or neglect to perform their statutory duty and enforce these orders of the Court.
- 5) I consider that the Plaintiff merits an award of general damages, given the circumstances of this case and the inconvenience that she and her family have gone through as has been noted by this court in this judgment. I consider an award in the sum of Ugs. 20,000,000/- (Uganda Shillings Twenty Million Only) as sufficient in the circumstances.
- 6) I award the Plaintiff costs of the suit.

It is so ordered.



BENJAMIN KABIITO

JUDGE

28/06/2013