THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

HCT – 08 – CV – MA - 0008 OF 2010

1. OLUMA MICHAEL
2. ATIMA LEE JACKSON __________ APPLICANTS

=VERSUS=

1. EXCEL CONSTRUCTION LTD
2. ATTORNEY GENERAL
3. NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY __________ RESPONDENTS

RULING

BEFORE HON. JUSTICE NYANZI YASIN

1. This action was started by the applicants against the 1st respondent on 14th April 2010. It is about 3 years now since that time. It was brought under Articles 39 and 50 of the Constitution of Uganda 1995, Rules 2 and 3 of the Judicature (Fundamental Rights and Freedom (Enforcement Procedure) Rules S1 13-14 and S3 (1) and (3) (a) of the National Environment Act.
2. It was by Notice of motion supported by Michael Oluma and Atima Lee Jackson's affidavits. On 25/05/2010 a document headed "Joint memorandum of scheduling" was filed in court but signed by only

M/s Manzi, Odama & Co. Advocates. Among other issues for determination it was proposed that ***"whether the application was brought against the proper party"*** be made an issue.

3. On 17th March 2011 when the application came for hearing Mr. Odama Henry who appeared for the applicants made an oral application seeking to amend the motion by adding the Attorney General and any other responsible parties to wit the National Environmental Management Authority (Hereinafter called NEMA). Court granted this application but gave no time within which to amend and serve the pleadings to the new parties. It adjourned the hearing to 2/05/2011.

4. On 9th July, 2012 the applicants' advocate filed in court the amended Notice of motion which added the Attorney General and NEMA. That was one year and about 4 months since the application to amend was allowed on 17/03/2011. Upon being served with the motion, the two added parties filed affidavits in reply opposing the motion.

5. The first affidavit in reply was filed on 11th May 2010 by AGGREY ZIRABA for the 1st respondent. It opposed the application. On 15/10/2012 the 1st respondent filed another affidavit in reply deponed by OTIALUK Stephen. On 14/10/2012 the 3rd respondent through ARNOLD Waiswa Ayazika also filed an affidavit in reply which materially opposed the application. The Attorney General opposed the application through the affidavits in reply sworn by Dr. ODU BENARD the Arua Regional Referral Hospital Director and Dr, ODAR EMMANUEL filed in court on 29/08/2012 and 29/04/2011 respectively.

6. As the respondents had been granted leave to file a supplementary affidavit of ATIALUK filed on 25/10/2012, the applicant was equally

granted leave to reply to the supplementary affidavit. That way the applicant filed an affidavit in rejoinder on 28/11/2012 deponed by AFEDRA GABRIEL. Lastly on 11th/12/2012 the 3rd applicant filed an affidavit it headed "Affidavit in rejoinder" which was deponed by NAOMI OBBO. This affidavit was vehementary opposed by Mr. Manzi Paul on grounds that it could not be introduced without leave of Court.

7. I have looked at the issues which are contained in the document filed on 25/10/2010 as "*joint memorandum of scheduling*" though signed by a single advocate. I believe they were overtaken by the subsequent events. New issues will be framed by the court under 0.15 r 5 (1) CPR.

8. This application was strongly presented but vehemently and spiritedly opposed by the learned advocates who appeared for the parties. They were Mr. Manzi Paul of M/s Manzi, Odama & Co. Advocates for the applicants. Mr. Okalang of Okalang Law Chambers for the 1st respondent, M/s Christine E. Akello from NEMA Legal department for the 2nd respondent and Mr. Charles Kasibayo from Attorney General's chambers Arua Regional office for the 3rd respondent.

9. Before dealing with the merits of the application there are two matters of preliminary nature that attracted the concern of the advocates. These are;-

   1) The rules under which this application was brought.
   2) The belated filing of the amended motion in one year and 4 months after the order was made.

10. It is true as Mr. Okalang argued the rules under which the application was brought are no longer law on our statute books. See holding in **Constitution Petition No. 26 of 2010 BUKENYA CHURCH**

AMBROSE =VS= ATTORNEY GENERAL. However Mr. Manzi made the relevant application to amend the law to be S.98 CPA, and 33 of the Judicature Act and 0.52 (1) and (2) CPR. This oral application was allowed by court after it was not opposed by the respondents. That makes that point to cease to be an issue.

11. On the second point all the three advocates for the respondents expressed serious concern that the applicants did not amend the pleadings in 14 days as **0.6 r 25 CPR** required them to do. After the delay they did not seek leave extending the time by court.

    Both accusations are true and the applicant did not deny them. Mr. Manzi made an attempt to explain the delay. Tat it was due to well intended attempts to settle the matter, but all other advocates apart from him were not aware of the negotiations he said delayed him. I would agree with the three advocates on that point.

12. In the alternative Mr. Manzi argued that due to the importance of the matter, court considers it under Art 126 (2) (e) so that substantive justice prevails over technicalities . I considered the issue of how long this application had been in court. If I dismissed it on the ground raised, the applicants would have filed an application seeking leave to extend time to file the amended motion. That would consume more time of the already delayed proceedings.

13. For that reason I decided to be more inclined to rule that substantive justice prevail over the rules. I however took serious exception to the period of 1 year and 4 months without action being taken. The amendment if filed would not have prevented the negotiations and there was no acceptable reason why the applicants kept NEMA and Attorney General out of the process. I only agreed with Mr. Manzi's request on the principle that each case is decided on its own

peculiarity in facts. I would discourage any one to use it as a precedents set by this court.

14. I will now turn to the merits of the application. The applicants own properties near the place where Arua Referral Hospital is constructing a lagoon. When the work was started by the 1st respondent which was contracted by the hospital, the applicants brought this application.

15. They sought from this court orders that a restraining order be issued against the respondents stopping them from any further construction of the lagoon. Secondly that an environmental restoration order be issued against the 1st and 2nd respondent who were constructing the lagoon.

16. On 27th April 2010 the applicants were granted a temporary injunction order upon application by this court stopping the construction of the lagoon. Sine that time all works on the lagoon stopped.

17. ***ISSUES FOR DECIDING***

1) Whether the 3rd respondent (NEMA) lawfully issued a certificate of approval of Environmental Impact Assessment to Arua Regional Referral Hospital (if not)
2) Whether court can cancel the said Environmental Impact Assessment certificate of approval.
3) Whether the application is overtaken by events and no longer triable.
4) Whether on Environmental restoration order can lawfully be granted as section 71 of the National Environment Act is independent of S.19 of the same Act.
5) Remedies to grant.

RESOLUTION OF ISSUES

18. ***Whether the 3rd respondent (NEMA) lawfully issued a certificate of approval of Environmental Impact Assessment (EIA) to Arua Referral Hospital.***

19. Mr. Manzi's main contention on the issuance of a certificate of approval of Environmental Impact Assessment (EIA) was that it violated S.19 of the National Environment Act. In his view when the certificate was issued after works on the lagoon had started, it amounted to placing a cart before the horse. Otherwise Mr. Manzi's interpretation of S.19 of the Act is that no certificate of approval can be granted after commencement of a project under S.19.

20. The advocates of the three respondents do not dispute that the EIA approval was granted after the works had been commenced but argued in unison on two points.

21. One - That the 3rd respondent had the power to grant the approval of the Environmental Impact Assessment (EIA) even after the commencement of the project and later that even the project had been redesigned meaning that the project that was stopped by Arua Municipal Council and the official officer of the 3rd respondent is not the one for which the Environmental Impact Assessment (EIA)) was approved.

22. Two – That the granting of the approval of the Environmental Impact Assessment (EIA) by the 3rd respondent followed the procedure required.

23. S.19 of the National Environment Act is the first application section here. Secondly is the 3rd Schedule to the Act and lastly the ***Environmental Impact Assessment Regulation SI 13/1998.***

24. All parties agreed that under clause 12 (c) Schedule III to the Act, Sewerage disposal works require approval of EIA by NEMA. Under

S.19 (1), a developer of a project described in the 3rd schedule to the Act shall submit a project brief to the lead agency. This appears to be the first step of deciding whether an Environmental Impact Assessment (EIA) approval is required.

25. It is provided under S.19 (3) that an Environmental Impact Assessment (EIA) shall be undertaken by the developer where the lead agency in consultation with the Executive director is of the view that the project;-

    1) May have an impact on the environment, or is likely or will have such an impact on the environment.

26. Under S.19 (7) where the authority is satisfied that after review of the environmental impact evaluation, the project will lead to significant impact on the environment it will require that a study be conducted. Then S.20 of the Act gives the manner under which an Environmental Impact statement is done.

27. S.19 read as whole has no provision for at what stage the 3rd respondent grant the approval. Its powers are general. It is not provided that no approval shall be granted to projects that have been commenced. Two positions seem to be correct. The first is that a developer is under the mandatory requirement to obtain an approval of Environmental Impact Assessment (EIA) from the 3rd respondent before starting a project.

28. ***Regulation 36*** of the ***Environmental Impact Assessment Regulation 1 SI 13/1998 provides;***

    "Notwithstanding any licence permit or approval granted under any enactment, any person who commences, proceeds with, carries out, execute or conduct any project without approval

from the authority under this Act or regulations commits an offence contrary to S.96 of the Act".

29. S.96 of the National Environment Act relates to offences committed if one breached S.19 of the Act dealing with Environmental Impact Assessment (EIA). The correct interpretation that can be given to **S.19, S.96** of the Act and **Regulation 36 of SI 13/1998** is that a developer is under a mandatory obligation to get an approval of Environmental Impact Assessment (EIA) before starting any project where the authority decides it is so required under S.19.

30. Secondly that failure to get such approval is an offence under S.96 of the Act and regulation 36 of SI 13/1998.

31. The obligations and responsibility under S.19. 96 and regulation 36 concerned the 2nd and 3rd respondent (the Hospital). To NEMA S.19 and the rest of the provisions are only enabling sections to allow it to do its statutory role. There is no provisions in the Act or regulations to the effect that there is a stage at which NEMA can not grant an approval and if it did so it would have placed a cart before the horse.

32. To justify that conclusion I will refer to S.6 of the Act. It deals with the functions of the Authority interalia.

    S.6 (i) provides as below as a function

    > *"(1) To ensure the observation of proper safeguards in planning and execution in planning and execute* ***of all development projects including those already in existence that have or are likely to have significant impact*** *on the environment determined in accordance with part V of this Act"* (emphasis added)

    (Part V of the Act deals with Environmental Impact Assessment (EIA) under S.19 – 23). See **ADVOCATES COALITION FOR**

DEVELOPMENT & ENVIRONMENT =VS= ATTORNEY GENERAL MISC. CAUSE NO. 100/2004 by OPIO AWARE J (as he then was) on the functions of the authority.

33. The above S.6 (1) show that it is the function of the Authority is to ensure that even projects which are already in exist so long as they have or are likely to have significant environment impact on the environment are monitored. That means the 3rd respondent have powers to enforce compliance by the 1st and 2nd respondent even after the project had started.

34. It would be self defeating for the 3rd respondent as an authority under S.5 of the National Environment Act so established to limit its powers to only projects that are starting. The authority's power under S.5 covers all environmental activities. See **SHEER PROPERTY LTD =VS= NEMA Misc. Cause No. 232/2008.** Comments by Mugamba J on the powers of the authority.

35. There appears to be a second concern by Mr. Manzi Paul about the legality of granting the approval of Environmental Impact Assessment (EIA). That it was done without consultation or participation of the community. This is an evidential matter. The evidence available tend to prove the otherwise.

36. In the affidavit of ATIMA LEE JACKSON dated 12th July 2010 he attached annexture "A" which is a New vision advertisement by Arua Regional Referral Hospital inviting bids for consultancy services for environmental and **social impact assessment in respect of the lagoon**. This advert shows and proves that the Hospital was concerned about the social aspect of its project.

37. In the affidavit of OLUMA MICHAEL also applicant para.10 thereof attaches annexture "B" in this annexture at page 2 para. 2 it is

admitted that the above said advertisement was ran. In paragraph 3 it is stated;

> *"In July the ULTO ENGINEERING LTD came to consult the community over the issue of whether we were in agreement to have the lagoon constructed in the settlement"*

This piece of evidence also confirms that the community was consulted. There is a difference between not being consulted and not taking as correct whatever the person being consulted says.

38. More detailed evidence of consultation is revealed in annexture D the Environmental Impact Assessment (EIA) report attached to the affidavit of OTIALUK dated 24th/10/2012. Pages 6 and 7 show 3 clear photographs of people being consulted. There was no evidence in rejoinder to challenge those photographs.

39. In addition the consultants clearly stated they consulted all stakeholders. At page 113-118 a list of 145 persons written in own handwriting, signed with both physical address and telephone contact given was attached to the report. They included elders, local councilors, ordinary residents and L.C. officials. In the light of the available evidence it would be unjustified with respect to raise a complaint that residents or stakeholders were not involved.

40. Another important aspect the affidavit of ATIALUK which introduced the report as annexture D shows is observance of procedural steps required under regulations 5, 6, 7, 8, 9, 13, 14, 17, 18, 24, 25 (b) and 26 (a) of the Environmental Impact Assessment Regulation SI 13/1998. What must be noted is that initially the project of the 3rd respondent was started by the 1st respondent with no Environmental Impact Assessment (EIA) certificate of approval. However when was opposed, the 2nd respondent acted in conformity with the law and

the 3rd respondent accepted its application as annexture "D" showed. I would therefore conclude that the 3rd respondent lawfully granted a certificate of approval of the Environmental Impact Assessment (EIA) to the 2nd respondent.

ISSUE 2

Whether the court can cancel the certificate for approval of the Environmental Impact Assessment (EIA) given to the 2nd respondent.

41. This court has the constitutional powers under Art. 139 (1) and S.33 Judicature Act plus S.98 of the Civil Act to inquire into all matters. Such powers would have been invoked if the 3rd respondent had granted the approval of Environmental Impact Assessment (EIA) to the Hospital when it did not have the power to do or if it had the power to do but improperly used such powers.

42. I have found on the foregoing issue that under the Act there is no provision that prevents or limits the authority from granting the approval of the Environmental Impact Assessment (EIA) to a developer whether before or after commencement of the project. I have also found that there was ample evidence to prove that the 3rd respondent followed the procedure laid down under SI 13/1998 before granting the approval. It naturally follows that the certificate of approval having been granted lawfully can not be cancelled by this court as there are no grounds upon which to base the cancellation.

ISSUE 3

Whether the application was overtaken by events and no longer triable.

43. In order to appreciate the above issue pleadings of the applicant must be resorted to. The relevant pleadings are the grounds in the notice of

motion upon which the application was premised. Relevantly and namely they are (a) (b) and (e). for reasons of clarity I will reproduce them.

44. (a) That the 1st respondent and agents or servants of the 2nd respondent **commenced construction of a lagoon** for Arua Regional Referral Hospital in a human settlement area in Anyafio cell, Arua Hill division, Arua Municipality **without an environmental Impact Assessment in violation of the law.**

(b) Subsequently the 3rd respondent **without carrying any assessment and/or consulting the** applicants and other people leaving in the area **unlawfully issued a certificate of approval of Environmental Impact Assessment** (EIA) for the construction of the said lagoon.

(e) The 1st respondent and agents/servants of the 2nd respondent are carrying out the said works on the lagoon **without approval from Arua Municipal Council and has defied orders** by Arua Municipal Council to stop the works.

45. The above grounds were supported by the applicants in their affidavits in support of the motion and relevant documents were attached.

In the affidavit of the 1st applicant in paragraphs 3, 4 and 10 it complained of lack of Arua Municipal Council approval and absence of EIA approval. Annexture A and B were attached.

46. Annexture "**A**" is a letter from M/s Manzi, Odama and Co. Advocates dated 15/3/2010. It complained of construction of a lagoon which the Municipal council of Arua had stopped and it was without an Environmental Impact Assessment (EIA) approval **annexture B** is a letter from the Environment officer, Arua Municipal. It complained of construction of a lagoon with no approval of Environmental Impact Assessment (EIA) from NEMA. In conclusion the author wrote;

"I therefore recommend that the project be stopped **and an environmental Impact Assessment be carried out by the developer to ensure that environmental issues are integrated into the project** as required the National Environment Management policy and the National Environment Act".

47. In paragraph 11, 12, 13 the first applicant complained of still of no approval of Environmental Impact Assessment (EIA). He attached annexture "D" to support the concern. Annexture "D" was written by Town Council of Arua Municipal Council. It concluded;

    "This is to direct you to stop any activity on site **until an Environmental Impact Assessment (EIA) is carried out"**.

48. The affidavit of the 2nd applicant is similar to the one analyzed above in all aspects including the documents relied on. Suffice to say that it also complained of construction of a lagoon with no approval of Arua M.C and without an Environmental Impact Assessment (EIA) certificate of approval from the 3rd respondent.

49. In their affidavits in reply the respondents filed through ATIAKUL Stephen for the 1st respondent, ARNOLD WAISWA for the 3rd respondent and Dr. ODU and DR. ODAR for the Attorney General all showed with documentary proof the following;-

    1) A certificate of approval of Environmental Impact Assessment dated 10/02/2011 NO. NEM/EIA 3580 had been issued by the 3rd respondent to the hospital after this application was filed.
    2) That on 15th March 2011 the Town Clerk of Arua M.C approved the revised drawing of Arua Regional Referral Waste treatment lagoon. The approved is endorsed by physical

planner, principal health inspector, the Municipal engineer and the Town clerk all of Arua Municipal council.

50. Relevantly OTIALUK deponed in para. 7 that the 1st applicant did not intend to deviate from the condition imposed in the certificate of approval. It was from the above line of pleadings that Mr. Okalang argued with support of the Attorney general that the current application was over taken by events as the remedies it sought were fully granted and catered for. It was a complaint against construction of a lagoon with no certificate of approval of Environmental Impact Assessment (EIA) and the same was granted.

51. This court was referred to the decision in **Civil Application No. 98/2005 out of CIVIL App. No. 78/2002. environment Action Network Ltd =Vs= Joseph Eryau.**

    Here the applicant sought among other orders, a declaration that smoking in public places constitute a violation of the right of non-smokers of the public to a clean and healthy environment. The High Court made some orders resulting into an appeal. However before the appeal could be heard, NEMA issued a statutory instrument No. 12/2004 – the **National Environment (control of smoking in public places) Regulation** which appeared to be the remedy the appellant was seeking.

    The issue before the court of appeal was to decide whether the issuance of the statutory instrument rendered the appeal to have been overtaken by events.

52. The court of appeal held that the matter had been overtaken by events because the relief sought from court was realized before the appeal was heard. On whether the court could hear the appeal for academic purposes court declined and said adjudication is on issue which

actually exist between litigants and not academic ones and court orders must be capable of enforcement and of practical effect.

53. ***Is there evidence to prove the present application to have been overtaken by events?***

Some aspects of the pleadings and the contents of affidavits can be considered;

a) The original notice of motion was filed on 14/4/2010 at that time annexture "C" of the affidavit of Waswa Arnord being the certificate of approval of Environmental Impact Assessment (EIA) did not exist as it is dated 10/12/2011.

b) Equally annexture "A" to the affidavit of Dr. ODAR EMMANUEL being the approval of the revised drawing for the lagoon dated 15/03/2011 did not exist but was subsequently issued after the motion had long been filed.

c) It is of interest to not e that when this dispute subsisted Mr. ASEDRI Fred wrote annexture "C" attached to the affidavit of the 1st applicant. He acted as the environmental officer of Arua M.C. I have already referred to this concern. It was the absence of approval of Environmental Impact Assessment (EIA) that had not been done. His letter is dated 04/02/2010.

d) On the 20th/10/2010 about 8 months after the same ASEDRI FRED authored another document clearing the project to be issued with a certificate of approval. That document is attached to the affidavit of OTIALUK Stephen dated 24/10/2012. It was his comments as the lead agency in respect of Environmental Impact statement prepared by ULTO ENGINEERING LTD.

e) Mr. ASEDRI made quite detailed comments almost on all areas of concern. His conclusions appear or page S.5 but the following are inevitable to state.

He concluded that the Environmental Impact statement has adequately addresses the issues in the terms of reference for undertaking Environmental and Social Impact Assessment (ESIA) for Arua Regional Referral Hospital Waste management system. He then recommended that;

> "*This Arua Regional Referral Hospital Waste management system and construction of a sewerage treatment lagoon Environmental Impact Statement, in my view could be considered for approval………….*"

54. It was on the basis of those comments and recommendation required under Regulation 24 (b) of S.13/1998 that the Executive Director approved the project under Reg. 25 (b) of the same Statutory Instrument.

55. The presence of documents that were being complained about as approval and certificates answered the basis of the dispute by the applicants. However according to the submission of Mr. Manzi it was not enough that the approvals had been granted.

56. In his view it was equally important that the approvals do consider the source of grievance by the applicants and the community. Consequently it must be answered whether or not the approvals granted took into account the concerns of the applicants and the community at large.

57. To answer the above question one may not need to look beyond two items. These are the Environmental Impact statement which Mr. Asedri recommended attached to the affidavit of OTIALUK of

24/04/2012. The second document is the certificate of approval of Environmental Impact statement together with the conditions it imposed, this was attached to affidavit in reply by Dr. Odar, Arnold Waiswa and Otialuk Stephen.

58. First it must be noted that the Environmental Impact statement presented by the Hospital came up with new plan of the lagoon which are attached to the statement. This was in conformity with the recommendation of Mr. Asedri Fred the Environment officer Arua Municipal council.

59. The statement shows from page 41-65 that Environmental Impact Evaluation and Mitigation was discussed and assessed. The sub-topics which dealt with impact evaluation included;-

1) Soil and water baseline conditions – page 41.
2) Pollution of the stream – page 46.
3) Solution to sewerage management for private developers at page 46.
4) Surface water pollution at page 47.
5) Ground water pollution at page 48.
6) Destruction of vegetation at page 49.
7) Increased soil erosion at page 49.
8) Possible contamination of soil – page 49.
9) Impact on solid waste management at page 50.
10) Impact due to poor lagoon design page 52.
11) Social economic impact – impact on the proposed location of the lagoon. This item referred to properties own by the applicants and other developers in particular and low, are likely to be affected or not affected by reason of distance from the proposed sale of the lagoon at page 53.

12) Pressure of Hospital expansion on in fracture at page 53.

13) Impact on small and unsightliness and its economic consequences to projects around at page 54.

14) Impact on public health at page 55.

60. From page 58 – 65 the statement detailed measures of mitigation of the potential impact on all those aspects listed above.

1) Particular interest goes to item 6.1 on page 58 which dealt with protection of River Osu which is a major source of water to the community. Scientific mitigation measures were proposed to mitigate the potential impact.

2) Another point of interest are mitigation measures on the impact of air quality/odour. At page 60 – 61. Details are discussed how the impact on our quality would be reduced.

3) The impact on poor lagoon design from page 61-63. Several measures were detailed. Of interest it is recommended that (see page 62 para.2)

> "The hospital management should ensure that the constructed lagoon meets the minimum requirement for the proposed lagoon design and maturation pound so that the physical chemical and biological properties are maintained to effectively treat the waste water"

4) At page 63 paragraph 4 mitigation measures on the impact resulting from lagoon location are discussed see item 6.2.2.

5) Impact resulting from noise, smell or unsightliness is discussed at 64. Some of these measure of mitigation sound so ordinary. There include planting of trees, grass and shrubs to improve the beauty of the area. See item 6.2.3 at page 64.

6) Impact on public health is detailed on page 64 how it can be mitigated.

61. At page 66-73 alternatives were discussed. There were six alternatives in total to be adopted. Two of them concern this application. Alternative 6 was the lagoon design the applicants objected to.

According to the Environmental Impact statement alternative six meant implementing the project as it is without any modification in design and without any compensation to the surrounding community. The consultants rejected this alternative outrightly. They gave three reasons;-

1) It would be resented by the community.
2) It could create local political opportunism.
3) It would be against the principles of environment management enshrined in the National Environment Act and the constitution of Uganda.

62. It should be remembered that it was the current design of the lagoon which caused this application to be filed on 14/04/2010 and that is what the Environmental Impact statement rejected it for implementation.

63. The Environmental Impact statement eventually recommended the implementation of alternative 5 which Mr. Asedri also had agreed with. This alternative suggested that the lagoon be modified. See item 7.5 on page 70 for details of modification. Secondly that property owners who qualify to be compensated be paid or resettled. At page 72 a list of affected persons is given using a comperative measure of 60m – 200m distance in relation to the lagoon location. Only 3 persons qualified but are not parties to this application. The

two applicants did not qualify for compensation since their distance are 93 and 110m which is above 60m from the lagoon.

64. In short alternative 5 modified the lagoon as detailed in the attached plan that Arua Municipal Council approved. The above details show and prove that whatever concerns the applicants had were dealt with before the approved was granted.

65. The second document that show how the applicants grievances were dealt with is the certificate of approval of Environmental Impact Assessment. This was issued conditionally. The conditions are attached to it. Conditions (i), (ii), (iii), (iv), (Viii), (ix), (x), (xi), (xii), (xiv), (xxxi) and (xxxii) all show how whatever concerns the applicants hand were dealt with.

66. I have studied the affidavit in rejoinder by AFEDRA GABRIEL dated 27th Nov. 2012. In essence it challenges the Environmental Impact statement as prepared by the consultants. Before considering its merits I have the following comments to make.

    The Environmental Impact statement which Mr. AFEDRA attempted to challenge is a result of a process laid down under the **Environmental Impact Assessment Regulation** SI 13/1998. The process starts from regulation 5, 6, 7, 8, 9, 10 and 11 where persons to carry out such study shall be approved by the Executive Director, 13, 14 and submitted under Reg. 17.

    It is eventually approved under Regulation 24 – 26.

67. I have been unable to see any where in the regulation a provision providing for the kind of challenge MR. AFEDRA put up. If such was so required the regulation would have provided for it.

68. I am also of the view that the Environmental Impact statement was prepared after field research and personal consultation with the

people. It took time to prepare and it is quite detailed. It is prepared and reviewed twice by the lead agency before it is presented the NEMA Ex-Director. It is approved based on the comments of the land agency, consequently on balance of probability it is better evidence than the contents of the affidavits in rejoinder.

69. The last problem to point out on the affidavit in rejoinder is its being speculative. On the 27/04/2010 my brother Kwesiga J.W. issued an order of Temporary injunction against the 1st respondent with all acting under it stopping any construction works of the lagoon. That means none of the recommendation or approvals has ever been implemented. They have all remained on paper.

70. Still for reasons of speculation he deponent ignored all the measures of mitigation the experts proposed. Example can be given.

- The contents of paragraph 4 are merely speculative.
- Paragraph 5 is contrary to the facts on the ground. The concerns of the community were considered. NEMA issued a conditional approval and the developer changed the design of the lagoon.
- The reply in paragraph 6 is mere speculation without giving a chance for the measures proposed to be implemented. The same would apply to paragraph 7.
- Paragraph 9, there is no foundation upon which the deponent says that the measures offered are short term measures and not long term. Changing design of the lagoon is not a short term measure.
- Compensation and resettlement of affected parties is not a short term measure.
- I take the rest of his disposition as a mere desire to negate whatever fact the experts stated in the report. That refers to paragraphs 15, 16, 17, 18 and 19. The alternatives he offered in

paragraph 20 if compared to the researched and detailed six alternatives of the Environmental Impact statement of Ulto Engineering Ltd, those in the Environmental Impact statement are more practicable and well explained.

- The National Water and Sewerage Corporation system can not be imposed on the Hospital which has a different program. The powers of National Water and Sewerage Corporation is to give a approval but not to impose its system on other developers forcefully.

71. In the result the respondents have proved;

    - That the applicants' grievance was construction of a lagoon with no certificate of Environmental Impact Assessment from NEMA which was granted.
    - That the lagoon had been approved by Arua Municipal Council which was approved.
    - It has also been proved that all the concerns of the applicants were considered but not yet implemented due to the court injunction.

72. I agree with Mr. Okalang proceeding with this trial would be for academic purposes which is not the work of this courts. The prayers sought in the application were over taken by events

ISSUE 4

Whether an Environmental restoration order can be lawfully granted as section 71 of the National Environment Act is independent of S.19 of the same Act.

73. Under S.71 of National Environment Act (NEA) court has the power to issue a restoration order against any person who has harmed or is harming or is reasonably likely to harm the environment.

74. Much as section 19 has limitation to matters mentioned in schedule III to the Act, S.71 is open. It appears to apply to both matters under schedule III and any other matter where the environment is harmed or likely to be harmed.

75. Had it been that that respondent (1st and 2nd) went ahead with the first project as challenged by the applicants, this court would have made the order under S.71. However the facts as they are today are different. In the earlier part of this ruling it was shown that the 1st and 2nd respondent abandoned the first project that was opposed by the applicants. They sought all the necessary approvals from the 3rd respondent and Arua Municipal Council which they got. They are awaiting the result of this application to restart the project. I do not for those reasons find any need for a restoration order. There is no threat to harm the environment at all.

REMEDIES

For the reasons given above this application was over taken by events and cannot be tried. It is dismissed.

This being a public interest matter it is however ordered as all the respondents agree that the new project be implemented strictly in conformity with the conditions set out by the 3rd respondent.

On costs I have looked at the number of people who on the record got interested in this matter though they are not parties, the number of people who attended the locus in quo, the 145 persons who allowed to be consulted and the whole effect the result of this application has on the people and took it to be public litigation though the applicants had

individual economic interest in it. I will not award costs to any of the parties.

NYANZI YASIN

JUDGE

21/06/2013

21/06/2013

Mr. Manzi Paul and Mr. Odama Henry for applicants.

Mr. Oscar Ilaat for Attorney general.

Miss Fiona Akuro hold brief for Mr. Okalang.

Mr. Oscar holds brief for Christian Akello.

Applicants in court.

Mr. Aggrey Ziraba for 1st respondent

Ms. Benard Odu hospital Director for 2nd respondent

Mr. Manzi Paul

We were served with a notice that ruling is ready. It was delivered on 19/06/2013. We are ready to receive the judgment.

Akuro Fiona and Ilaat also are ready.

Court: Ruling delivered in presence of the above in open court.

NYANZI YASIN

JUDGE

21/06/2013