

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

CIVIL SUIT NO. 230 OF 2013

MUKWASI GENERAL CONTRACTORS LTD :::::::::::::::PLAINTIFF

VERSUS

- 1. LIVING WORD ASSEMBLY LIMITED**
- 2. KAMPALA CAPITAL CITY AUTHORITY :::::::::::::::DEFENDANTS**
- 3. NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY**

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The Plaintiff brought this suit against the Defendants jointly and/or severally under Article 50 of the Constitution of Uganda with a claim for general, punitive and exemplary damages for the tort of nuisance, negligence, breach of statutory duty as a result of the noise pollution from the first Defendant’s adjoining property Plot 21, Lumumba Avenue, Kampala. The Plaintiff prayed for judgment against the Defendants in which he sought for orders that the plaintiff and the public’s right to a clean and healthy environment are being violated, a permanent injunctive order to abate the nuisance caused to the general public and to restrain the first Defendant or its agents and or servants from continuously emitting excessive noise and interfering with the Plaintiff’s and its agents/ tenants peaceful use and quiet enjoyment of their commercial property, interest on all pecuniary awards and costs of this suit.

The Plaintiff is the registered proprietor of land comprised in LRV 2689, Folio 4, Plot 23, Lumumba Avenue Nakasero, Kampala which is a six storey commercial building known as ‘Soliz House’, adjoining Plot 21 Lumumba Avenue on which the First Defendant operates and houses its Living Word Assembly Church congregation. The Plaintiff alleges that the first Defendant emits excessive noise which violates their and the public’s constitutional right to a clean environment. The first Defendant and the Plaintiff made an amicable Memorandum of Understanding to co-exist peacefully on 21st November, 2011 which the plaintiff alleges that was continuously breached by the 1st Defendant.

The 1st Defendant denies that the church emits excessive noise and that it conforms to the legal requirements. It also denies that it ever breached the Memorandum of Understanding that was signed.

The 2nd and 3rd Defendants both submitted that they had fully discharged their statutory duties and denied the claims by the Plaintiff that they failed in their mandate to protect the plaintiffs and general public right to a clean and healthy environment.

The parties filed a joint scheduling memorandum. At the hearing, the parties agreed that the only issue for determination before court is the noise levels allowed in this area and in the interest of justice filed written submissions to address the court on that issue.

AGREED ISSUES

- 1. What are the permissible decibels the First Defendant should operate in, under the National Environment (Noise Standards and Control) Regulations, 2003?**
- 2. What are the remedies available to the parties?**

RESOLUTION OF THE ISSUES

Issue 1

What are the permissible decibels the First Defendant should operate in, under the National Environment (Noise Standards and Control) Regulations, 2003?

The 1st Defendant and Plaintiff entered into a memorandum of understanding on the 21st day of November 2011 wherein among others they resolved and reached an understanding that both parties work together for the development, delivery operation, administration and management of Noise levels in the Living Word Assembly.

The 1st Defendant however was reported for continuously generating excessive noise which prompted the Plaintiff to report the 1st Defendant to the 2nd and 3rd Defendant.

The Plaintiff brought this suit under **Article 50 (1) and (2) of the 1995 Constitution of Uganda** which provides that:

Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

Any person or organization may bring an action against the violation of another person's or group's human rights.

The Plaintiff claims that 1st Defendant violated their and other people's constitutional right under **Article 39 of the Constitution of the Republic of Uganda** which provides for a right to a clean and healthy environment by the continuing noise pollution.

The 3rd Defendant has authority under the **National Environment Act, Cap 153** to regulate emission of noise to the environment.

Section 28 provides for standards for the control of noise and vibration pollution.

The Authority shall, in consultation with the lead agency, establish -

(a) Criteria and procedures for the measurement of noise and vibration pollution;

(b) Minimum standards for the emission of noise and vibration pollution into the environment;

(c) Guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.

Section 107. Power to make regulations.

(1) The Minister may, on the recommendation of any Minister, the policy committee or the board, make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed, for giving full effect to the provision of this Act.

(2) Regulations made under subsection (1) may adopt wholly or in part or with modifications any rules, standards, guidelines, regulations, byelaws, codes, instructions, specifications or

administrative procedures prescribed by any lead agency either as in force at the time of prescription or publication or as amended, from time to time, thereafter.

On that premise, The National Environment (Noise Standards And Control) Regulations, 2003 were enacted to ensure a healthy environment for all the people in Uganda, the tranquility of their surroundings and their psychological wellbeing by regulating noise levels, and generally, to elevate the standard of living of the people by -

- (a) Prescribing the maximum permissible noise levels from a facility or activity to which a person may be exposed;
- (b) Providing for the control of noise and for mitigating measures for the reduction of noise; and
- (c) Generally for giving effect to the provisions of section 28 of the Act.

According to a report about the noise pollution inspections at living world assembly church compiled by Nakabuye Rashidah, the noise levels in decibels being emitted by the Church in the neighborhood at 10 meters is 64.8 decibels.

The National Environment (Noise Standards and Control) Regulations of 2003 regulate the standards of noise depending on the location and use of the land in question.

The Plaintiff submitted that the area in question is a general area under **Regulation 6 (1) of the National Environment (Noise Standards and Control) Regulations of 2003**, therefore the noise levels should be limited to the permissible decibels under the said regulation.

Regulation 9 (5) of the National Environment (Noise Standards and Control) Regulations of 2003 defines a residential or noise control zone to mean “**a geographical area that encompasses hospitals, schools, residential houses and other institutions....**”

The Plaintiff further submitted that the suit is brought on two folds; the public and the Plaintiff herself. Despite fact that the Plaintiff’s premises are used for commercial purposes, there are also residential houses adjacent to the 1st Defendant’s premises. This implies that the geographical area in question is a mixed residential and commercial thus falls in the ambit of regulations 6 (1) above.

It was the Plaintiff's submission that the maximum permissible noise levels for the geographical area in question are enshrined in Facility C, Part 1 of the First Schedule of the National Environment (Noise Standards and Control) Regulations of 2003 and are limited to fifty (55) decibels during day and forty five (45) decibels at night.

The Plaintiff submitted that the Second Defendant is under **Section 22 (3) of the Kampala City Council Authority** mandated to approve and designate places of worship or permit the emission of loud noise by a religious assembly like the 1st Defendant. To this end, the 2nd Defendant neither permitted the First Defendant to emit excessive noise nor designated the 1st Defendant's premises as a place of worship.

The Plaintiff further submitted that the 2nd and 3rd Defendants' pleadings and evidence attached thereto confirm that the 1st Defendant has no license or permit to operate as a place of worship and no license to the contrary has been delivered to this Court. Particularly the 3rd Defendant in both its pleadings and witness statement on record, sworn by Ms. Kutesakwe Jennifer confirm that the noise being emitted by the 1st Defendant was excessive. Thus the First Defendant intends to mislead this court that the noise emitted by her falls within the permissible levels.

The 1st Defendant submitted that according to Regulation 6 (7) the maximum noise level from a place or area of worship to which a person in the Noise Control Zone specified in Column 1 of Part VII of the First Schedule may be exposed shall not exceed the level specified in Column 2 during the time specified in that Part.

The 1st Defendant submitted that the Plaintiff is classified as commercial under the noise control zone hence in a Commercial noise control zone, the permissible noise levels are 75 decibels during the day and 50 decibels at night.

The 1st Defendant submitted that Regulation 6 (1) that the Plaintiff relied on does not apply in this case.

The 2nd Defendant submitted that according to the Kampala Physical Development Plan Nakasero (where Lumumba Avenue is located) is the city center of Kampala (the central business district of Uganda) and has mixed use of commercial and city center residences.

The 3rd Defendant submitted that the area where the Plaintiff and the 1st Defendant falls under General environment area under Regulation 6 (1) and the maximum permissible noise levels for a general environment area is 55 decibels during day and 45 decibels at night as provided in Column 1 Facility C Part 1 of the First Schedule of the National Environment (Noise Standards and Control) Regulations.

As submitted by the 2nd Defendant, according to the **Kampala Physical Development Plan** (which was availed to this Court by the 2nd Defendant) Lumumba Avenue is an area of mixed use of commercial and city center residences. However the schedule that provides for permissible noise levels in places of worship only separately provides for residential and commercial zones but doesn't provide for places of worship in mixed use zones.

This court does not have authority to make laws as that is the duty of the Parliament of Uganda however it has authority to grant such remedies to solve matters of controversy between parties.

According to **Section 33 of the Judicature Act Cap 13**

“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”

In this case since there is a lacuna in the law as far as places of worship in areas of mixed commercial and residential, this court finds it just and fair that the 1st defendant complies with the maximum permissible noise levels for general environment mixed residential and commercial noise control zones provided for under regulation 6(1) as follows:

Day	55 decibels
Night	45 decibels

Issue 2

What are the remedies available to the parties?

Having resolved the 1st issue, the best available remedy to the parties is an order that the 1st defendant reduce and regulate their noise levels to comply with the permissible decibels.

According to a report about the noise pollution inspections at living world assembly church compiled by Nakabuye Rashidah, the noise levels in decibels being emitted by the Church in the neighborhood (soliz house) at 10 meters is 64.8 decibels.

Although the 1st defendant is entitled to full use of their property, the emission of excessive noise levels is interfering with the legitimate use of the plaintiff's property. The plaintiff has lost tenants as well as potential tenants shunning the property due to the excessive noise emitted by the church. The church cannot continue to exercise its rights while legitimately inconveniencing the plaintiff.

According **G V Odunga** in his book **Odunga's Digest on Civil Case Law and Procedure Volume 8 pg 5889 - 5890** while citing **Sarova Hotels v Annabells Kenya Limited [1991] KLR 266 (Pall, J on 10 April 1991)** states that:

'... a person who disturbs another person in his legitimate enjoyment of his property cannot justify that disturbance as being the natural result of the exercise of his own rights of enjoyment if he exercises his rights in an excessive and extravagant manner. See Halsbury's Laws of England (4th edition) volume 34 paragraph 323

The act complained of is an inconvenience if it materially interferes with the ordinary physical comfort of human existence not merely according to elegant or dainty modes and habits of living but according to plain and sober and simple notions obtaining among the people.' See **Halsbury's Laws of England (4th edition) volume 34 paragraph 324**

The 1st defendant should therefore reduce their noise levels from 64.8 decibels to 55 decibels during the day and 45 decibels at night.

Costs

Each party shall bear its own costs.

I so Order.

SSEKAANA MUSA
JUDGE
19th/12/2018