



Tim Kabaza, et al.. v. Chatha Investments Ltd.

[2008] UGHC 122; Miscellaneous Application No. 745 of 2007

Country: Uganda

Region: Africa

Year: 2008

Court: High Court at Kampala

Health Topics: Environmental health, Water, sanitation and hygiene

Human Rights: Right to a clean environment, Right to water and sanitation

Facts

Applicants were residents of Kyambogo Lower Estate, where they used a common facility for sanitation in the form of septic tanks. The channels leading to those tanks were located on a road reserve and the Respondent intended to erect a perimeter fence around that road reserve. Respondent was given an offer, containing certain terms and conditions, by Kampala City Council to carry out development on the property in question. Applicants alleged that the fence both flouted those terms and conditions and would block Applicants from accessing the way-leave, which connected them to the sewerage system that served their estates. Respondent alleged that Applicants would be unaffected by the fence because Respondent was going to relocate the septic tank.

Applicants filed a suit for public nuisance in the High Court to stop any development regarding the perimeter fencing and requested a temporary injunction to allow time for the main suit to be decided.

Decision and Reasoning

The Court held that Applicants fulfilled the requirements for the grant of a temporary injunction, to be issued for a fixed period of six months. The main suit was to be decided within that time.

With respect to issues of standing, the Court did not consider the suit filed as a representative action or a class action, because the Plaintiffs were affected by the impending fence individually and not solely as members of an overall community. The Court noted, however, that environmental health rights can be enforced by anybody under Article 50 of the Ugandan Constitution, whether or not such person was interested in the subject matter.

As far as establishing nuisance under certain principles required for a temporary injunction to be granted, the Court found that (a) the Applicants had shown a prima facie case with a probability of success in the main suit due to the facts that nuisance was both a civil and criminal matter, and the activities of the Respondent drew popular concern; (b) Applicants had shown likely irreparable damage as the nuisance at issue could result in serious environmental consequences affecting future generations; and (c) in a determination between the right to a clean and healthy environment (Applicant) and the right of ownership and use of property (Respondent), the balance of convenience to maintain the status quo fell in favor of Applicants.

Decision Excerpts

There was also contention that the Plaintiffs did not have locus standi in that their homes were far from the septic tank and were not using the same. First of all the above contention was not borne of any evidence. It was therefore submission from the bar. However, there was evidence by way of affidavit that the Applicants would be denied access to public septic tanks by the acts of the Respondent. That would clearly constitute a cause of action in nuisance. Above all, the cause of action seems to be on enforcement of environmental rights. It is trite law that environmental health rights can be enforced by anybody under Article 50 of the Constitution whether such a person is interested or not in the subject matter. It is not in dispute that NEMA had drawn issues against the activities of the Respondent in this matter. • Page 5.

As far as irreparable injuries are concerned, I do agree that it is very difficult to assess damages caused by nuisance in monetary terms because it concerns mainly inconvenience. Moreover the inconvenience here is related to the rights to a healthy environment. There is also the issue of degradation involved in the matter. This may result into serious consequences on the environment, which may not only affect the Applicants but

future generations. Such injuries may not be atoned in damages. For the above reasons I find that the Applicants have also established that they are likely to suffer irreparable damages.â€• Page 6.

â€œLastly, on the balance of convenience, court has to decide on the right to a clean and healthy environment and the right of ownership and use of property. The cardinal principle is that there must be sustainable use of property. In this case there is concern from the Applicants that the Respondentâ€™s activities are likely to deny them access to septic tanks, which would inflict on their right to a clean and healthy environment.â€• Page 6.

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