

**ENFORCEMENT OF ENVIRONMENTAL LAWS AND IT'S
SOCIO-ECONOMIC IMPACT ON THE ENVIRONMENT:
AN APPRAISAL.**

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**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN
PARTIAL FULFILLMENT FOR THE AWARD OF BACHELOR
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UNIVERSITY**

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DECLARATION

I AYAA ALMA declare that this dissertation is my own work and it has never been presented for a degree or any award to any university.

LLB/35060/113/DU

Signed

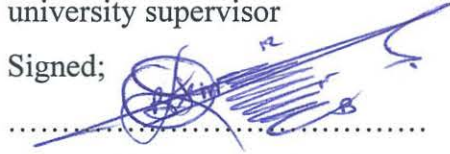
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Date.....13./07/2015.....

APPROVAL

This is to certify that this dissertation has been submitted for examination with my approval as a university supervisor

Signed;

A handwritten signature in blue ink, consisting of a circular loop followed by several horizontal strokes and a final upward flourish.

Date. 13th / 07 / 2015

Mr. OBALOWOSE OJO
SUPERVISOR

DEDICATION

This Research is dedicated to my lovely parents Mrs. Caroline and Mr. Ogwal Bob Alex..
Who should know why, a lot has been done and I can't express it. May God bless you so much
and may you live to blow a thousand candles.

ACKNOWLEDGEMENT

I thank the Almighty God for his provision and grace bestowed unto me during the process of my research.

Gratitude goes to my supervisor Mr. Obalowose Ojo who sacrificed his time and effort in making sure that I complete this report successfully. Sir you deserve applause.

And to my friends Angel, Mangaro and Sam. E who strengthened me, gave me courage and support in making this research complete, am so grateful for you.

lastly to Denis C. who with all diligence helped me in compilation of this work. You have used all your effort in making sure that this work is put on paper. May you leave to be remembered always and may God surely reward you. AMEN

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1. The 1995 Constitution Of The Republic of Uganda
2. The National Environment Act, cap 153
3. The Mining Act 2003
4. The National Forestry And Tree Planting Act
5. The Uganda wildlife Act cap 200
6. The Land Act 2003
7. The control of Agricultural Chemicals Act cap 28

LIST OF CASES

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2. Juan Antonia and anor Vfulgencia factorian 1993 Sup court of philistines Gr 1010283
3. Dr Bwogi Richard kanyerezi V The management comitee of Rubaga girls school Civ App No 3/1996
4. The Rule in Rylands V Fletcher [1868] LR3 ,HL330
5. British American Tobacco [BAAT] The Environmental Action Network [TEAN] HCCS NO 27 /2003 Misc App 390
6. Bandhua muktimorch V Union of India 1984 Supreme court of India
7. Jane lugolobi and 9 others V Gerald Siginnya Misc App No 371 of 2002 arising from Hc civ suit No 482 of 2001
8. Green watch V Attorney General MA No140/2004
9. Minister of Health V Wood Carb Pty ltd SA 155 [N]1996
10. Environmental Action Network ltd V Attorney General NEMA Misc APP No 39/2000.

LIST OF ABBREVIATIONS

NEA - National Environment Act cap 113
NEMA - National Environment Management Authority
EIA - Environmental Impact Assessment
NGO - Non Governmental Organization
NEAP - National Environment Action Plan
TEAN - The Environmental Action Network
MTEF - Medium Term Expenditure Network
PEAP - Poverty Eradication Action Plan

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ABSTRACT

The study is designed to establish enforcement of environmental law and how it has caused an impact on environment.

In particular the study will determine both the social and economic impact of the laws on the environment in Uganda.

The study will also look at the tools of environmental law enforcement such as environmental standards and institutional framework for environmental management such as courts.

Focus shall be placed on factors affecting environmental law enforcement and ways of curbing Non enforceability of environmental laws.

Information concerning the study is obtained from both primary and secondary sources such as text books, journals, encyclopedias' amongst others.

Lack of enforcement of the law is largely due to socio- and economic factors, conflict of roles of the bodies created to enforce laws. Poor funding and sensitization has created poor results on ground.

To sum it all, the various legal frame work lacks a unified code of law. They are not found in a single book and they do not complement one another. Otherwise the legal and policy framework is adequate though there is a shortage of man power to implement the laws.

CHAPTER ONE

INTRODUCTION

Environmental law is a law which relates to use, protection and conservation of environment, while environment¹ refers to the physical factors that surround man and its activities which include: climate, atmosphere, odor, taste, land, water, sound, the biological factors of animals, plants and the social factor of aesthetics and includes both the natural and the built environment. Environmental law aims at conserving the environment and protecting it as well. Conservation² means supervision, management and maintenance of natural resources; the protection, improvement and use of natural resources in a way that ensures the highest social and economic benefits.

Generally environmental law seeks to protect human health, manage natural resources, land use and other activities that affect the air, soil and other environment³.

1.1 BACKGROUND OF THE STUDY

Problem of environmental law enforcement in Uganda

“Enforcement” simply means the range of procedures and actions employed by the state, its competent authorities and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws can be made to comply and punishment given for failure through civil, administrative or criminal actions⁴.

Before the establishment of colonial rule in Uganda, rural communities had their customary rules which governed the use of natural resources such as fauna and flora species and wetlands.

In the coming of the colonialist they enacted environmental laws such as forestry Act 1947, the timber export Act, the fish and crocodile Act, the game park Act 1952, however, all these laws were just to safeguard the colonialists interests on the country's resources.

On attaining independence in 1962, despite the fact that the population was increasing gradually, colonial environmental laws were only re-enacted and adopted giving no specific emphasis to

¹ *The National environment Act cap 153*

² *Black's law dictionary*

³ *United nation's Environmental program for and on behalf of NEMA guide to practical law in Uganda. Handout 2003 p.41*

⁴ *Ibid*

their enforcement. No special provision was given to managing natural resources such as water, wild life, soil and vegetation. Very many laws and regulations without gazette policy resulted into conflicts between government department and the public thus undermining their effectiveness on the ground.

Principles of common law of tort were adopted but even these were not enforced as they were limited for lack of locus standi in matters of environment.

The 1995 constitution of the republic of Uganda was promulgated on the coming of NRM government into power in 1986 giving the provision for right to a clean and healthy environment⁵ in Uganda. However, despite several other constitutional environmental provisions in this constitution, their interpretation and application was low. This was due to the fact that environmental laws were new in Uganda hence they were not emphasized. Also there was lack of public interest litigation, government also failed to set up the machinery to implement their constitutional duties.

That was why litigants lost environmental cases due to lack of locus standi as was in the case of **GREENWATCH AND ANOTHER V GOLCOURSE HOLDINGS**⁶. The plaintiff sought to stop construction of a hotel in a wetland as it contravened **National Environmental Act**⁷ when the defendant asked the plaintiff to deposit a large sum of money as a guarantee of costs, the plaintiff failed to do so hence failing enforcement of environmental law due to financial problem.

1.2 Research problem:

Uganda's environment is faced with degradation of soil and impoverishment of flora and fauna. These have caused problems in large parts of Uganda thereby making human life unbearable. It has also become clear that resource degradation is to a large extent man made; for example the people have no choice rather than to resort to activities which tend to degrade the environment for their livelihood, for instance de-forestation. However, all these happen due to poor law enforcement mechanisms. The government and its component units (local government) that are saddled with responsibility of protecting the environment for the good of the people⁸ are not fully committed to this cause. Inadequate funding of the environmental sector by the government

⁵ Article 39 of the constitution of the republic of Uganda.

⁶ Hcs no 834 of 2001

⁷ Section 36

⁸ Article 237(b) of the constitution of the republic of Uganda 1995

has posed a serious challenge. Lack of public awareness on environmental laws/guidelines has also caused a great set back

1.3 Research purpose.

The purpose of the research is to identify ways of environmental law enforcement in Uganda with the view of coming up with ways of enforcing compliance to these laws. Specifically the study will determine the impact of these laws, both socially and economically on the environment.

1.4 The objectives of the study.

They are as follows:-

1. To examine the existing environmental laws in Uganda and their enforcement.
2. To establish socio-economic impact of these laws on the environment
3. To establish factors affecting environmental law enforcement in Uganda
4. To establish the effect of non enforceability of environmental law to the environment in Uganda.

1.5 Research hypothesis.

Laws of environment in Uganda are capable of protecting the environment although there are shortcomings to effective implementation of these laws. However, implementation of these laws shall endear the necessary positive change that has been craved for.

1.6 Significance of the study.

The study will help law enforcers like the local administrators and NEMA in carrying out their work. It will also help the public to improve on protection of environment and create awareness on various laws of environment that concern them.

Nevertheless, the study will enrich the documented resource of Kampala international university and students will find it easier to research based on findings of the study.

1.7 Scope of the study.

The study is mainly to analyze the environmental laws, the role they play in the protection of environment, and to determine the effect of non enforceability of environmental laws and the governments' intervention on the protection of the environment.

1.8 Literature review.

The researcher shall look at and analyze a number of literature and studies which are related to the study topic by visiting public and private libraries, writers' series, reports and also websites in order to acquire information. Literatures from domestic and international sources whose emphasis were on environmental law enforcement would also be consulted.

Dr Albert Mumma⁹ examined the background of environmental law in the common law jurisdictions and noted that common law has contributed to the main framework within which modern environmental laws has been developed, and indeed it is true that common law for instance in Nakawa, cultural beliefs have contributed to norms geared towards conservation of environment. For example they have dug local dustbins "Akassasiro" for collecting rubbish. This indeed helped in the conservation of environment.

It is important to note that tremendous work was done in area of literature on how effective the policies and laws are:

According to Professor John Okedi former executive director NEMA, it's true that policies and laws are in place including the tools like public trust doctrine, environmental audits, environmental monitoring, environmental restoration orders, wetland permits among others. However, given all these tools, environment still faces a lot of degradation, destruction and yet there are laws, policies and affiliate enforcement bodies put in place to protect the environment. It is therefore prudent to note that there are still more to know on how effective the environmental laws are in protecting the environment.

⁹ Dr Albert Mumma: paper prepared for the symposium for environmental law lectures from African universities. Nakeru 29th Sept 2nd Oct 2004

John Mugabe and Godber W. Tumushabe¹⁰ discussed environmental law enforcement challenges citing statutory limitation. They noted that environmental matters are to be brought to court as civil litigation matters.

The law¹¹ imposes statutory limitation for a period of six months after the act, neglect or default complained of or three months after ceasing of the injury or damage. Hence, environmental problems emerge after a very long period after damage has been done. In other cases the polluting company may have ceased to exist as a legal entity. In which case there would be no defendant to be held liable. Court should therefore eliminate limitation periods for environmental cases.

It should also be noted that NEMA is principally the coordinating, monitoring and supervising body which causes implementation through the environmental local units in the districts. Where the conflict arises between the coordinator and those to implement, institutional downfall arises with the resultant effect of ineffective implementation of environmental laws. It's therefore important that coordinator and implementers appreciate each other for better results of environmental law enforcement.

Article 50¹²(1) provides for any person who feels that his/her fundamental rights have been infringed to apply to a competent court of jurisdiction for redress. However, considering the fact that court proceedings are lengthy and expensive, private citizens may find it difficult to invoke this provisions hence making the enforcement of environmental law a challenge.

In claiming for environmental rights, there has been a conflict between the government and the public interest bodies in demanding for enforcement of environmental laws. For instance, in 2008 when opposition leaders tried to resist replacement of mabira forest with sugar cane plantations, instead they were labeled anti-government. Until now they are still in courts of law faced with charges of inciting the public to violence contrary to section 51 of the penal code Act cap 120 laws of Uganda.

¹⁰ John Mugabe and Godber W. Tumushabe. *Environmental governance: conceptual and emerging issues* p.83

¹¹ Section 4 civil procedure and limitation (miscellaneous provisions Act cap 72)

¹² The 1995 constitution of the republic of Uganda

Nevertheless, the literature has discussed the socio-economic impact of the laws on the environment in Uganda. For instance, the national forestry and tree planting Act no.8/2003 which provides for conservation and sustainable management of forest for the benefit of the people of Uganda, declared forest reserve for production of forests, forests products and also provide for the promotion of tree planting and consolidate laws relating to the forest sector and trade in forests produce. The challenge however comes in where the government has sold some parts of mabira forests to private investors which in turn therefore does not benefit the public. In addition the government did not seek for public consent for sale. With respect to above, enforcement of environmental laws becomes difficult hence seeking better measures for enforcement of environmental law becomes inevitable.

1.9 Research methodology.

The researcher has used different methods deemed fit for collection of data on the study topic which among others include:

1.9.1 Research design

The research was based n descriptive and analytical research design. This is because it allowed the researcher get accurate and correct information and effective way of research presentation.

1.9.2 Source of data

The data used by the researcher in the study is both primary and secondary source which includes articles, text books, reports, journals, interviews, observations among others.

1.9.3 Limitations of the study

There was a short time frame for making research and doing my final exams at the same time. This in turn was a big problem.

Refusal of the respondents to effectively respond to the questions for instance questions that relates to government failures for fear of arrests.

Finally, financial constrain was also another factor that limited the study.

However, with all these limitations, I tried my best to come up with research study on time.

1.10 Chapterization

Chapter two: Will discuss enforcement of environmental laws in Uganda

Chapter three: Will discuss tools of environmental law enforcement in Uganda.

Chapter four: Socio-economic impact of the laws on environment.

Chapter five: Observation, recommendation and Conclusion

CHAPTER TWO

ENVIRONMENTAL LAWS IN UGANDA AND THEIR ENVIRONMENT

2.0 Introduction:

Environmental law evolved way back in 1970

The first law on environmental was passed by the USA in 1970. It was called the national environmental policy Act.

Prior to that, other states had their own laws governing the environment, mans relationship to the environment has always been governed by the state of his technology to exploit his resources and the law has tended to follow the state of man's knowledge and technology.

However, the development of environmental law and its enforcement in Uganda can be divided into five phases namely; pre-colonial phase, colonial phase post independence phase, Amin's regime phase and post 1986 phase and in all this phases environmental law varied in its enforcement¹³.

a). Pre-colonial Phase.

In the pre-colonial phase, rural communities had evolved various customary rules which governed use of natural resources such as forests and wetlands, there was communal use of natural resources such as land water and forest, certain Flora and Fauna species were given special protection due to their purposes /use , example trees used for medicine as well as religious reasons and also certain vegetation were protected as herbs;

Certain features were regarded as abodes for gods example lake Victoria also known as Nalubale was considered a home for the gods (Lubaale) and so

¹³ Godher W. Tumushabe Environmental Governance, Political change and constitutional development in Uganda pp66-76.

due to deep respect given, They need not be forced to obey . Enforcement was by way of the people's loyalty to their customs.

b) Colonial Phase.

During this period (1894 to 1962) Uganda has been under the control and command of the British given that Uganda was a British colony, the English legal system and law were predominant in Uganda, the legal system was based on English common law and African customary law.

However with time, Different laws related to Environmental management were developed they were intended to regulate use of specific resources and collect revenue, the laws dealt with specific resources which included. The Forestry Act 1947 the fish and crocodile Act. The Game parks preservation Act 1952, the Timber exports Act; among others, because at this time the population was small and no pressure was put on environmental these laws remained on paper and so it was just to safeguard the interest of the colonialist in the resources of the country.

Different laws related to environmental management were developed, they were intended to regulate use of specific resources and collect revenue.

The laws dealt with specific resources which included;The Game Park preservation Act 1952, the Timber exports Act among others, because at this time the population was small and no pressure was put on environment, these laws remained on paper and so it was just to safeguard the interest of the colonialists in the resources of the country.

c). Post Independence Phase.

When Uganda attained independence in 1962, Most of the laws were not changed. They were only re-enacted and adopted. For example the Game parks preservation Act 1952 became the National Game parks and preservation Act 1964 and the Forestry Act 1947 became the forestry Act 1964,. Also substituting names such as "public" for "Crown" and "Uganda" for "Britain."

Since the population was growing, failure to develop new laws to govern use of natural resources became a threat on the environment and to the people as well. However, the management of other natural resources such as land water, wildlife and vegetation was on the basis of numerous

laws and regulation without a gazetted policy resulting into conflict between Government and public therefore lowering the impact of the laws.

d). Amin's Regime Phase.

This period was characterized by dictatorship and undemocratic system of government therefore environmental law enforcement had a very big problem, however, on the other hand there was a prohibition of Burning grass Decree which required permission from agricultural officer with the supervision of the chief before one could burn the grass was enacted . Today it has been re-enacted as the prohibition of Burning of Grass Act cap 33.

e). Post 1986 Phase.

The coming of National Resistance Movement 1986, a number of measures to address problems of environment was adopted and various laws come into force. They include the 1995 constitution, land Act National environment management Policy 1994, National Environment Act, water Act among others.

2.1 The Environmental Laws In Uganda.

There are a number of legislations concerning environment in Uganda as shown below:

2.1.1 The Constitution of The Republic Of Uganda 1995

The constitution of Uganda provides for a right to a clean and healthy environment¹⁴ and by the enforcement of this right provides for right to litigation¹⁵ which states that any one is free to apply to a court of competent jurisdiction for redress, if he/ she feels that his right has been infringed upon.

As a result of the above provision, a number of people have filed environmental cases in different courts of law in abid to protect the environment, and parliament has enacted and placed various laws as indicated here under (foot note) while people have tried to adhere to it despite several challenges.

¹⁴ Article 39 of the constitution of the republic of Uganda 1995

¹⁵ Article 30 bid

However, in the **Philippines case of Juan Antonia and others V Fulgancia Factorian**¹⁶.

The right to clean and healthy environment was equated to the right to life, it was observed by the supreme court that “as matter of fact these basic rights need not even be written under constitution for they are assumed to exist from inception of human kind.....” this means that life and environment are inseparable. That is why of all planets, life only exists on planet earth because environment on earth is conducive to life.

2.1.2 The National Environment Act cap 153.

The Act was enacted to provide protection and management of environment, to establish an authority to be co-ordinating , monitoring and supervisory body in respect of environment and for other matters connected with it¹⁷. In this respect, the National Environment management Authority (NEMA) was established¹⁸.

The Act provides for a right to a healthy environment and a duty towards enforcement. NEMA is therefore empowered to bring an action against any person whose activities might have a significant impact on the environment. Such actions would include preventing any Act or omissions dangerous to the environment.

In **Greenwatch and Advocates coalitions for development and Environment V Golf course Holdings ltd**¹⁹. The applicant NGO concerned with environmental protection sought a temporary injunction to restrain the respondents from constructing an hotel on a wetland.(Akiiki Ki 129). Government although declined to issue the injunction, recognized the fact that the interest of the applicants was stated to be of public on nature and S. 71 gives them a right to sue, The right to prevent any act or omission is not only vested in NEMA but to any public officer, NGO and they have the right to take measures to discontinue an Act or omission deleterious to the environment, requiring that an on going activity be subjected to an environmental Audit, monitoring and requesting a court order for the taking of other measures to ensure that environment does not suffer any significant change /damage²⁰.

¹⁶ cited from a paper presented by Apollo N. Makubuya at an International colloquium on the significance of Human rights for the African continent.

¹⁷ National Environment Act cap 153- long title

¹⁸ S. 4 (1) ibid

¹⁹ MISCA 390 of 2001.

²⁰ 2LS3 Ibid

2.1.3 The Land Act cap 227

The land Act under S. 43 provides that a person who owns or occupies land shall manage and utilize the land in accordance with forest Act, the mining Act, the National Environmental Act, the water Act and any other law. Section 44²¹ provides for public trust doctrine by providing that the local government shall hold in trust for the people and protect natural lakes, rivers, ground water, natural ponds, streams wetlands, forests, parks and any other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda and the government shall not lease out or otherwise alienate any natural resource referred to in this section.

However government or the local government may grant concession or licenses or permit in respect of a natural resource referred above.

The act provides for sustainable management of wildlife. Its objectives is to consolidate the law relating to wildlife management to establish a monitoring and supervising body for that purpose and for other matters incidental to the ,a fore going²²

The Act Under S. 3 provides that ownership of every wild animal and plant existing in its wild habitat in Uganda is vested in the government on behalf of and for the benefit of the people of Uganda²³.

The Act lays down procedure for declaration of wildlife conservation area section 17 provides that the minister may after consultation with the local government council, in whose area a proposed wildlife conservation area falls and with approval of a parliament signified by its resolution declare an area of land or water a conservation area, for wild life.

S.2 provides for wildlife use rights granted to a person community to make utilization of wildlife to include; hunting, farming, ranching and trading in wild life products general extractions and educational purposes, such persons have to make applicant has informed all the adjacent owners and occupiers of his application.

²¹ Land Act cap 227

²² the Uganda wildlife Act cap 200 long title

²³ 1S3 ibid

2.1.4 The Mining Act 2003.

It replaced mining Act cap 148 with a new legislation on the mining and mineral development which otherwise gives effect to relevant provisions of the constitution to vest the ownership and control of all minerals in Uganda to the government²⁴

The act restricts acquisition of mineral right in case of individuals to citizens of Uganda above the age of 18 years and who are bankrupt. In case of a company, such should be registered in Uganda or incorporated under the companies Act²⁵ section 14 of the Act empowers the commissioner for Geological survey and Mines Department to inspect mines factories or promises where Mineral are kept or processed to ensure among others that the provisions of this Act are complied with, for example the health and safety of persons employed there in and impose restrictions where it deemed necessary.

Whoever obstructs a commissioner from carrying out his duties commits an offence and is liable of a conviction to a fine not exceeding one hundred currency points or imprisonment for a term not exceeding one year both.²⁶

2.1.5 The National Forestry and Tree Planting Act 8/2003

The Act set out provision for the conservation and management of forests for the benefit of the people of Uganda, declare forests reserves of protection and production of forest and forest procedure. It also provide for the sustainable use of forest resource and the enhancement of the productive capacity of forests, and provide for the promotion of tree Planting and consolidate the law relating to the forest sector and trade in forest produce.²⁷

Under section 5 of the Act, the government is to hold in trust for the people and protect forest reserves for ecological forestry and tourism purposes.

However, in a bid to protect environment, the act provides that an order declaring a central forest reserve shall only be revoked if protection is provided for streams, rivers , lakes, shores , riverbanks wetlands and wildlife from detrimental changes in temperature or from erosion, pollution²⁸ etc.

²⁴ The mining At 2003 long title

²⁵ S.51 Ibid

²⁶ S .15 Ibid

²⁷ 28 national forestry and Tree planting Act 8/2003

²⁸ Section 8 ibid

The Act prohibits destructive activities in forest reserve and creates an offence on contravention of the same by imposing a fine not more than 50 (fifty) currency points and or imprisoned for a term not exceeding five years or both²⁹.

2.1.6 The Control of Agricultural Chemicals Act cap 28

The act provides for control of manufacture, package storage, display, distribution, possession or transportation of any agricultural chemical except in accordance with the provisions under this Act³⁰

The Act also provides for registration of agricultural chemicals fumigators and commercial appliances and premises, protection of workers and operators engaged in manufacturing, formulating, packaging and storage of agricultural chemicals³¹

Registration and classification of dangerous processes substances and waste enables the controlling Authority to ensure that such process and substances are kept under control.

The offences and penalties under this Act call for a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding five years³².

However, the trial shall be instituted on the consent of the Director of public prosecution.

2.2 Common Law Principles

Common law principles may be defined as that law that originated from England and became applicable in Uganda by virtue of 1889, 1902 and 1911 orders in council and was retained by the 1967 Judicature Act.

A number of common law principles have played an important role in environmental law and they include:

- a. The law of torts
- b. The law of property
- c. Land law

²⁹ Section 14 ibid

³⁰ S 2 of the control of agricultural chemicals Act.

³¹ 32 S.12 ibid

³² 12 ibid

2.2.1 The Law of Torts

Tort may be defined as a civil wrong or a crooked conduct³³. The law of tort mainly provides compensation for personal injury and property damage caused by negligence. It must be shown that the wrong was done intentionally although there are some torts of strict liability. Most torts are actionable only if they have caused damage but torts whose main aim is to protect rights rather than compensate for damage are actionable without proof of damage.

The remedy available for tort is damage or some times injunction.

A number of common law causes of actions are important in obtaining remedies for environmental wrongs those wrongs are regarded as torts. The various causes of action under environmental torts among them include.

2.2.2 Negligence:

Negligence can be referred as an act or omission to do something which a reasonable man guided upon by those considerations which ordinarily regulate the conduct of human affairs would do or doing something that a reasonable and prudent man would not do³⁴.

For one to succeed under negligence one must prove that the defendant owed him the duty of care, that the defendant breached the duty and that he suffered damage as a result of such breach.

In environmental law, where the environment is perceived as a public good- the application of negligence is limited.

However, environmental matters being a public good the 1995 constitution of Uganda³⁵ makes it possible for the public to make claim s under negligence in respect of their right to a clean environment provided by the constitution Article 39.

2.2.3 Nuisance

Its one of the most important common law tort in environmental cases. It provides remedy for noise pollution, water, vibrations, smells, soils, flooding among others,

Nuisance is defined as unlawful interference with the persons use or enjoyment of land.¹ and nuisance can be private or public.

³³ Oxford Dictionary of law 6th Edition p.237.

³⁴ Per Anderson B. in Blyth v Birmingham water works co (1856)11 Exch 781

³⁵ 23Article 50 of the constitution of the Republic of Uganda.

Nuisance has therefore been used as a pillar for setting environmental standards meaning it has a close connection with environment³⁶.

In the case of **DR BWOGI RICHARD KANYEREZI V THE MANAGEMENT COMMITTEE OF RUBAGA GIRLS SCHOOL**³⁷

The plaintiff was complaining of a pit latrine constructed near his premises which was bringing out a bad smell. The court ordered relocation of the latrines with proper ventilation; hence the plaintiff's interest was protected as well as the environment from being polluted by such taxious smell.

2.3 The Rule in Rylands V Fletcher³⁸

In this case a mill owner constructed a water reservoir on his land to provide water for the mill. Later the flood came and filled the neighbours mines flooding the land when the neighbour sued the house of the lords up held the action, Blackburn J stated that “ the person who for his own purposes brings on his lands collects and keeps there any thing likely to do mischief if it escapes must keep it at his peril otherwise is premafacie liable for the damages”. The rule is relevant under environmental law in the sense that if any thing be it in the factory, wetlands or anything, provided it escapes, the person will be liable for the act, injunction with polluter pays principle and involvement of the public into matters of empowerment and looking at Article 50³⁹ Which give aggrieved person a right to apply to a court of competent Jurisdiction for redress which may include compensation.

2.3.1 Riparian Rights

These are rights related to the use of water in a stream, river, lake that stem from persons property interest in or possession of land bordering the water⁴⁰.

The person therefore has a right to continue flow of water in its natural quantity and quality.

The person who owns those rights are called riparian owners.

³⁶ Prof. Winfield and Solowicz (winfield and Solowicz on tort London sweet and max we;; 15 ed. Page 4

³⁷ CIV APP No 3 Of 1996

³⁸ (1868) LR3 , HL 330

³⁹ Article 50

⁴⁰ 1995 constitution of Uganda.

Section 7 of the water Act cap 152 gives out the principle of riparian rights and provides that subject to section 8 a person being temporary or occupier of or a resident of a land where there is natural source of water may use the water for domestic ,fighting fire or for irrigation.

Riparian rights do not exist for water underground since it does not flow in a visible defined channel like surface water.

Therefore a person who digs a dam and dries the neighbours well cannot be sued in riparian rights although there are some protection for the ground water against pollution.

2.4 Land Law.

In Uganda land is divided into freehold mailo, leasehold and customary system of landholding⁴¹. The law of property gives the land user exclusive right of ownership of land and the right for them to deal with this resources on land as he thinks fit save as restricted by the law, for instance a lease holder has exclusive possession of premises only subject to the lessors right such as re—entry in case of breach⁴² under the registration of titles Act.

However , land misuse has a lot of negative impact on the environment, for instance , stone quarries where stones are excavated on privately owned land and in the process explosives are used to break the rocks which results into

heavy blasts damaging the building scaring animals and birds. Damaging peoples eardrums and bringing dust which results into pollution

In a bid to curb the problems, Article 50 provides a remedy for the people who are affected in that any one is free to apply to a court of competent Jurisdiction for redress in case of infringement of their rights.

2.5 Conclusion

There are very many laws set up to protect environment as discussed above, however, environment is still facing a lot of challenges especially, degradation in various parts of Uganda which comes as a result of lack of proper mechanism of enforcement of such laws which includes civil , litigation, criminal sanctions and administrative procedures . Most failures of adherence to the law are mostly associated with the local people.

⁴¹ Article 237 (3) of the 1995 constitution

⁴² 1995 constitution of Uganda Section 114 R.T,A

CHAPTER THREE

3.0 Introduction

Tools of enforcement of environmental law includes; environmental standards, environmental monitoring, environmental restoration orders, environmental impact assessment, environmental audit, principles of environmental law like the precautionary principle, polluter pays, public participation, environmental rights, and sustainable development among others.

However, there are also a number of problems in the implementation of the above mentioned tools ranging from lack of personnel, inadequate funds and lack of public awareness.

3.1 Environmental Standards

National environmental act part (vi)⁴³ deals with environmental standards, the standards are considered in respect of water quality, air, and discharge of effluent into water, noxious smells, noise and solid waste disposal standards.

However, according to my observations, these standards have not been established nor implemented and thus not complied with for instance British American tobacco factory along Jinja road still pollute the air, further there are no such standards for water used for different purposes as people use water for any purpose, heaps of foul smell and night clubs, churches produce uncontrolled noise. Hence in Uganda environmental standards in most cases remain on paper not implemented.

3.2 Environmental Monitoring

Environmental monitoring is a continuous determination of actual and potential effects of any activity or phenomena on the environment whether short term or long term. The general objective of monitoring is to establish the status of the environment and to evaluate the impact of various activities on the environment in general and natural resources in particular.

The specific objectives are:

- i. To follow the movement of harmful agents through the environment into living creatures and man himself.
- ii. To identify the activities which are beneficial to the environment and ensure sustainable use of natural resources

⁴³ cap 153

- iii. To understand the present levels of degradation by various agents so as to judge whether the abatement policies, project and programs are succeeding.
- iv. To identify environmental risks and impacts not previously known so that they can be brought under controlled.

NEMA is required in consultation with a lead agency to monitor all environmental phenomena with a view to making an assessment of any possible changes in the environmental and their possible impacts and the operation of any industry, project or activity with a view of determining its immediate and long term effects of the environment

3.3 Environmental Impact Assessment

This is a systematic examination conducted to determine whether or not the proposed project will have adverse effects on the environment. It is an essential management tool in ensuring environmentally sound development planning in society. It is a process for examining, analyzing and assessing proposed activities in order to maximize the potential for environmentally sound and sustainable development.

The process was designed to:

- i. Ensure that the appropriate government authorities have fully identified and considered the environmental effect of proposed activities as well as alternatives to avoid or mitigate the effects.
- ii. Ensure that the affected citizens have the opportunity to understand the proposed project or policy and express their views to design makers in advances.

National environmental Act⁴⁴ requires a developer of a project prescribed in the third schedule to the Act to submit a project brief of the lead agency in the prescribed form and give the prescribed information where the lead agency in consultation with NEMA is satisfied that an environmental impact review or an environmental impact evaluation conducted does not disclose possible significant impact on the environment, it may approve the environmental aspects of the project otherwise it will require that an environmental impact study be conducted.

⁴⁴ section 19

3.4 Environmental Restoration Orders

NEMA is given powers to issue to any person in respect of any matter to the management of the environment and natural resources- an environmental restoration order which may be issued requiring the person to restore the environment as near as it may be to the state in which it was before the taking of action which is the subject of the order, preventing the person from any action which would do harm to the environment ; awarding compensation to be paid by that person to other persons whose environment or livelihood has been harmed by the action is the subject of the order or levying a charge on that person which represents a reasonable estimate of the cost of any action taken by an authorized person or organization to restore the environment to the state in which it was before the taking of the action which is the subject of the order⁴⁵

Where a person on whom an environment restoration order has been served fails, neglects or refuses to take the action required by the order, NEMA may with all necessary workers and other officers, enter any land under the control of the person on whom that order has been served and take all necessary action in respect of the activity to which that order relates and otherwise to enforce that order as may seem fit.

For example in Uganda, Godfrey Nyakaana LC3 chairman Kampala central division put up a structure on a wetland and failed to comply with NEMA's directives to vacate the land. NEMA then ordered a demolition of the structure, hence the environment was protected.

3.5 Environmental Audit

Environmental audit is defined under national environmental Act⁴⁶ as the systematic, documented, periodic and objective evaluation of how well environmental organization, management and equipment are performing in conserving the environment and its resources

Audits unlike environmental impact assessment address planned projects.

It can be voluntary audit by the owner of the facility to determine his compliance with environmental standards or enforcement. Compulsory audit by NEMA or a lead agency or inspector to determine whether a facility is complying with the set standards⁴⁷.

⁴⁵ section 67 *ibid*

⁴⁶ section 1(q)

⁴⁷ section 22 *ibid*

The environmental impact assessment regulations 1998 provide for an environmental audit to be conducted as a matter of law to determine whether project in actual operation conforms to the projections made during the environmental impact assessment.

3.6 Public Interest Litigation

Public interest litigation is not defined in any statute but it describes legal actions brought to project or enforce rights that are enjoyed by the members of the public or large parts of it. These are preceding which are regarded as having a public element and which involve remedies traditionally associated with matters of public concerns, they occur where the violation of an environmental right or duty is made by private persons including corporations. Such suits may be filled by any public spirited individual or group of individuals or by a civil society organization on behalf of a person whose rights have been violated and it is not essential that the person filling the suit should have an interest in the matter of the suit.

Public interest litigation may be used in a strategic manner to advance the position of disadvantaged and vulnerable groups.

The legal framework has created avenues for public interest litigation. Article 50 (2)⁴⁸ of the constitution specifically gives a basis for public interest litigation by providing that any person or organization may bring an action against the violation of another persons or groups human rights.

Article 50 has been interpreted in a number of public interest cases for instance;

The case of **British American Tobacco (BAAT) V the environmental action network (TEAN)**⁴⁹

Where TEAN filed an application under article 50(2) seeking orders of the court that the respondent as a manufacturer of cigarettes is under legal duty to fully warn the consumers of its products of the full extent of the risk associated there with.

Although the order was denied, on whether article 50(2) authorizes filling of actions on grounds of public interest by private persons. Natabgoba J held that persons “organizations” can be read to include public interest litigants that the constitution does not recognize the existence of the

⁴⁸ *the constitution of the republic of Uganda*

⁴⁹ *HCCS NO 27 of 2003 MISC APP 390 of 2001*

needy and the oppressed person and therefore it cannot allow actions of public interest groups to be brought on their behalf.

Section 71 of the national environment Act provides that the court may in proceedings brought by a person issue a restoration order against a person who has harmed the environment.

In **Green watch and advocates coalition for development and environment V Golf course holdings ltd**⁵⁰ the applicant NGO concerned with environmental protection sought a temporary injunction to restrain the respondent from constructing a hotel on a wetland. Akiiki kiiza C.J although declined to issue the injunction recognized the fact that the interest of the applicants was stated to be of public nature and s.71 gives them a right to sue.

The role of public interest litigation

Public interest litigation has proved to be efficient in the quest for effective environmental stewardship. It allows public to move from lamentation to strategic, decisive and enforceable action that will enable the deprived section of society to realize their rights. This view was held in the case of **Bandhua Muktimorch v union of India**⁵⁰ where Bhagwah J. noted that public interest litigation is not in the nature of adversary litigation but it is a challenge and an open opportunity to the government to make environmental rights meaningful to the deprived and vulnerable sections of the community and assure them social and economic justice which is the signature tune of the constitution.

Secondly: it is a basis of assisting those who cannot access courts of law to protect their rights for instance the poor, illiterate and children

3.7 The Precautionary Principle

The first traces of precautionary principle can be traced around the early 1980s. The council of experts on environmental matters considered the precautionary action as a requirement for a successful environmental policy for the North Sea ecosystem. Two years later in 1982. The world charter for nature reemphasized the position in its principle 11(b), the charter stated that, “activities which are likely to pose a significant risk to the nature shall be proceeded by exhaustive examination, their proponents shall demonstrate that expected benefits outweigh

⁵⁰ 1984 supreme court of India

potential damage to nature and where potential adverse effect are not fully understood, the activities should both proceed.

Principle 25 of the Rio declaration on development and environment states “in order to protect the environment, the precautionary principle shall be widely applied by states to their capabilities. Where there are threats of serious and irreversible lack of full scientific certainty shall not be used for postponing cost effective measures to prevent environmental degradation.

However, in the application of precautionary principle in court, courts have been undecided in applying the precautionary principle, court gives judgment based on evidence and not speculations .Precautionary principle appears to question the foundation of evidence law

In **Jane Lugolobi and 9 others V Gerald Siginnya**⁵¹,

Court held that the consequence of continued processing of carry powder in the neighbour hood of the applicants by the respondents is so serious and long term that they cannot be compensated by damages. Court further held that precautionary principle is applied in this case.

3.8 Polluter Pays Principle

This principle demands that a person responsible for pollution should bear the cost associated with prevention, control and clean up. The objective of this principle is to shift the burden of pollution cost from the public to the polluter himself.

Principle 16 of the Rio declaration provides that the national authorities should endeavour to promote the environmental costs, taking into account that the polluter should in principle pay the cost of pollution

The polluter pays principle is implemented in diverse ways in many counties such as user fees imposed on those utilizing public water treatment services, toxic state disposal sites example establishment on the basis of the risk they pose and in cases where the public authority or agency takes any remedial measures with expenses thereof are to be recovered from the responsible establishment together with the interest accruing.

⁵¹ Misc App No 371 of 2002 a raising from high court CIV suit No 482 of 2001

3.9 Environmental Judicial Remedies

Article 50(1) of the constitution provides that any person, who claims that his rights (including environmental rights) have been violated, can apply to a competent court of jurisdiction for redress. Such redress includes the following⁵².

Judicial review;

This is a remedy that may be used to quash a decision (certiorari), stop an unlawful action (prohibition), require the performance of a public duty (mandamus), declare the legal position of the litigants (declaration), give monetary compensation, and maintain status quo (a stay)

In the case of **SIRAJI WAISWA V KAKIRA SUGAR WORKS LTD**⁵³ The applicant/plaintiff filed a suit for orders among others that the respondent/defendant be prohibited from acquiring Butamira forest reserve and uprooting the forest to establish a sugarcane plantation, which order was granted by Justice Yorukamu Bamwine (as he then was)

Injunctions,

The purpose of an injunction is to restrain the respondent from continuing with an act that has caused harm, that is the subject of litigation, it's based on convenience such that the court will weigh the inconvenience it will cause to the applicant if the injunction is not granted and the inconvenience it will cause to the respondent if the injunction is granted.

In the case of **Jane Lugolobi and others V Gerald Siginnya t/a smart curry powder factory**. An injunction was granted by the court restraining the respondent from carrying on the manufacture of curry powder at the respondents' factory in Lutanda zone, Kanyanya Kampala, residential area, which factory emitted irritating fumes which polluted the air and making excessive noise day and night.

⁵² John Ntambirweki. *Guiding principle in development of legal framework for environmental management as presented in UN environment program for and on behalf of NEMA. Guide to environmental law practice in Uganda 2003 chapter 4 90 MA NO 230 of 2001 arising from civil suit No 69 of 2001*

⁵³ **SIRAJI WAISWA V KAKIRA SUGAR WORKS LTD**

Damages,

The purpose of damages is to put the victim as far as possible in the position he would have been if no damage had occurred. Damage can be general, where the exact loss cannot be quantified or specific where the actual loss can be ascertained.

Declaration,

A declaration can be made as to the rights of the parties in respect of an alleged violation. However in cases where there has been harm, this may not be the appropriate remedy as it may not yield effective approach to environmental restoration,

In the case of **Green Watch V Attorney general**⁵⁴

The applicants sought for among others a declaration that the manufacture, distribution, use , sale, disposal of plastic bags, plastic containers and all other forms of plastic commonly known as “kaveera” violates the right to a clean and healthy environment. Although not implemented as yet, this application resulted into a ban of “kaveera” of less than 30 microns on the Ugandan market.

3.10 Conclusion

This chapter has extensively looked at tools and principle of environmental law enforcement, however, in the above content. A lot needs to be done because many of the above tools have not been implemented in Uganda but as for litigation, the judges are determined to offer the litigant’s justice as once said by the chief justice his lordship Benjamin Odoki.... “we fall short of our constitutional duties when we watch environmental degradation taking place and do nothing about it.”⁵⁵

⁵⁴ MA No 140 of 2004

⁵⁵ *New Vision Wednesday may 21st 2003 CJ Benjamin Odoki speaking at a symposium for judges and magistrates on environmental law and practice*

CHAPTER FOUR

THE SOCIO- ECONOMIC IMPACT OF THE LAWS ON ENVIRONMENT

4.0 Introduction

Impact⁵⁶ basically refers to the powerful effect that something has over somebody or something; in this aspect I mean the powerful effects of laws on the environment.

The intention of the law specifically in this area is to regulate activities on the environment both socially and economically with the view of preserving it⁵⁷ for the benefit of the present and future generation.

4.1.1 The 1995 Constitution Of The Republic Of Uganda

The 1995 constitution of Uganda is the supreme law and provides for environmental protection and conservation; it sets out the norms, standards, rights, national objectives and national principles of state policy. Principle XIII of the national objective and directive principles provides that the state shall protect important natural resources including water, wetlands, mineral oil, fauna and flora on behalf of the people of Uganda.

Under Article 39, the constitution provides that every Ugandan citizen has a right to a healthy and clean environment, the scope of this right entails a right to a clean air, water, conservation of resources, prevention of pollution and protection from disease that result from Poor environmental condition;

In Uganda today, the right to a clean environment has been promoted through the ban of polythene bags commonly known as “kavera”, this has been through the tireless efforts of NEMA to conserve and preserve the environment.

In the Philippine case of **Joan Antonia Opossa and others V Fulgancia Factorian**⁵⁸ The right to a clean and a healthy environment was equated to the right to life. It was observed by the Supreme Court that “as a matter of fact this basic right need not even to be written in the constitution for they are assumed to exist from inception of mankind....”

⁵⁶ *The oxford advanced learners dictionary. 8th edition*

⁵⁷ *The 1995 constitution Article 245*

⁵⁸ *1993 supreme court of Philippines Gr1010283*

4.1.2 The National Forestry And Tree Planting Act, 8/2003

The Act provides for the sustainable management, conservation and development of forest for the benefit of the people of Uganda, and declares forest reserves for purposes of protection and protection of forests and forests produce. Provide for promotion of tree planting and constitute the law relating to the forest sector and trade in forest produce⁵⁹

This law is being put in place for instance Uganda has several forests like Mabira forest which has been preserved for purposes of protection of forest produce.

Protecting wild life for tourist purposes among other use, this indeed has brought both economic impacts on the environment and social as well.

On the other hand, the Act also prohibits destructive activities in forest reserves and creates an offence in contravention of same, imposing a fine of not more than fifty currency points, imprisonment for a term not exceeding five years or both⁶⁰

The Act also gives court powers to confiscate and order forfeiture of any forest produce in respect of which an offence was committed, any machinery, weapon or other thing which was used to commit the offence and such produce to be disposed off, cancel license or disqualify a person from obtaining a license, vacate the land⁶¹

By declaring forest reserves to be held and controlled by government and providing strict rules concerning revocation of such order, declaring a forest reserve making provision for tree planting and restoration of land vegetation, prohibiting destructive activities in forest reserves, the Act protects the environment.

4.1.3 The Uganda Wildlife Act cap 200

The Act provides for sustainable management of wildlife, its objective is to consolidate the law relating to wild life management and to establish monitoring and supervisory body for that purpose.

Section 3 of the Act provides that ownership of every wild animal and plant existing in its wild habitat in Uganda is vested in the government on behalf of and for benefit of the people of Uganda.

⁵⁹ *National forestry and tree planting Act 8/2003*

⁶⁰ *Section 14*

⁶¹ *Section 83,84,85,8*

Section 29 provides for wildlife use rights granted to a person, community or organization to make some extra utilization of wildlife. They include hunting, farming, ranching and trading in wildlife products, general extractions and educational purposes. For example in Uganda, wild reserve like Kidepo national park and other game parks, people are allowed to visit the game park for study and tourism purposes. These in turn has boosted the economy of Uganda economically. However, section 41 prohibits the use of fire, prohibition of hunting of the dependent young and hunting in darkness among others. Hence protecting and preserving the environment.

4.1.4 The Mining Act. 2003

The act restricts the acquisition of mineral right in case of individuals to citizens of Uganda above the age of 18 years and who are undischarged bankrupt⁶². In case of companies, such should be registered in Uganda or incorporated under the company Act.

To safeguard the environment, the Act imposes environmental standards⁶³ and provision that a holder of exploration license or mining lease shall include in his plan, an environmental restoration plan of some of the areas that may be damaged or adversely affected by his activities. It is important to note that the mining activity has helped to improve the lives of Ugandans especially those who work at the mining sector. It has provided employment to many people for example at the Kilembe mines (copper) hence promoting livelihood

Section 14 of the Act empowers the commissioner for geological survey and mines department to inspect mines, factories or premises where minerals are kept or processed to ensure among other things that the provisions of this Act are complied with, for instance the health and safety of persons employed therein and impose restrictions where it deemed necessary. Whoever obstructs the commissioner in carrying out the duty commits an offence and is liable to a fine not exceeding one hundred Currency points or imprisonment for a term not exceeding one year or both⁶⁴

⁶² *The mining Act. Long title*

⁶³ *Section 109*

⁶⁴ *section 15 ibid*

4.2 THE ROLE OF THE BODIES

4.2.1 The Role of Parliament

Article 245 of the constitution requires parliament to provide for measures intended to protect and preserve the environment from abuse, pollution and degradation to manage the environment for sustainable development and promote environmental awareness.

4.2.2 The Role of Courts

Article 50(1) of the constitution provides that any person who claims that a fundamental or other rights or freedom has been infringed upon is free to apply to a court of competent jurisdiction for redress. These courts therefore have a vital role to play in the enforcement of government laws and its impacts on the environment.

In Environmental Action Network Limited V AG and NEMA⁶⁵,

Article 50 of the constitution was again interpreted where it was observed inter-alia that the articles does not require the applicant to have the same interest as the parties seeks to represent or for whose benefit the action is brought.

Article 126(2)(e) of the constitution provides that the courts in adjudicating cases of both civil and criminal nature should subject to law, do justice to all without undue regard to technicalities to award adequate compensation to victims of wrongs.

4.2.3 The Role Of The Public

Citizens are one of the greatest resources for enforcing environmental laws and causing an impact on environment. They know the country's land and natural attributes more intimately than government ever will. The right to a clean and healthy environment comes with obligations of public to maintain and enhance the environment and inform the environment or local environment committee of activities that may affect the community significantly.

The public has helped to collect information for uses in enforcement of environmental laws. They have participated in government regulatory or enforcement actions to ensure that they are well informed and that the government is protected. For instance in northern Uganda, in order to

⁶⁵ *Misc Appln No 39 of 200*

protect the environment, the public in some areas have coped up with government ideas of a forestation and indeed this has helped to conserve and preserve the environment.

4.2.4 NEMA, National Environmental Management Authority,

The national environmental Act under section 4⁶⁶ establishes the national environment management authority as the principal agency in Uganda for the management of the environment, who should coordinate, monitor and supervise all activities in the field of environment; it is also expected among other things to play the role of ensuring⁶⁷ the integration of environment concern in overall national planning through coordination with relevant ministries, departments and agencies of government. Also propose, environmental policies and strategies to policy committee, initiate legislative proposals, standards and guidelines for the environment in accordance with the Act⁶⁸

A look at the above roles, indicate that NEMA has a very wide jurisdiction over environment, undertaking studies and submitting reports and recommendations with respect to the environment.

It should also be noted that NEMA is also mandated to monitor, mobilize and expatiate matters related to resources for environmental management including monitoring and implementation of environmental standards. For instance, in May 2015 NEMA has tried to monitor the implementations of standards on the ban of “kavera” which was brought in 2009, most of the People / supermarkets have tried to cope up with the idea hence causing a great impact on environment.

4.3 Wetlands Management Division Of Ministry Of Water And Environment.

The wetlands inspection division established⁶⁹ in 1989 under the national wetlands conservation and management program (NWCMP) came in the wake of a slowly emerging realization in government circles and civil society that wetlands are extremely important ecosystems that contribute considerably to the National economy and rural livelihood.

⁶⁶ *The national Environment Act cap 153*

⁶⁷ *S. 6(1) (b) N.E.A*

⁶⁸ *S. 38 of N.E.A*

⁶⁹ *Emmanuel Kasimbazi: Environmental law and policy*

The wetlands inspection division is under the ministry of water, lands and environment whose tasks among others includes; Making an inventory of all wetlands showing the location of the wetland, type of fauna and flora found in it, the density of the population in the wetland catchment drawing attention especially on those whose activities are most dependent on wetlands. They are also required to periodically inspect the wetlands to determine necessity for revision or correction of the inventory on wetlands.

However, they also grant temporary⁷⁰ Permits for the use of wetlands in consultation with the executive director of NEMA where there is need to use water pending availability of alternative source. For example where there is need to irrigate an area, construct, research project requiring use of wetlands among others. However due to poor funding, the inspection department cannot effectively carry out its duties and often people take advantage of these permits to degrade environment/wetlands.

4.3.1 Kampala Capital City Authority (KCCA)

This is a body made up of five city municipalities formed for the running and management of the activities within the capital⁷¹ city. Kampala capital city authority as a district under the principle of decentralization devolves⁷² power to the municipality who is expected among others to supervise wetlands related activities, pollution, congestion etc.

The authority has a directorate of physical planning⁷³ whose activities are aimed at incorporating plans from lower level governments and especially on matters related to the environment from the local environment committees and worthy noting that the planning function is backed by the town and country planning Act, where structures developed in the city have to seek approval of their architectural design.

This component is to check unplanned developments and the effect is that developments should be encouraged in planned areas and in approved plans without which such structure attracts a demolition for non compliance. For instance the recent 2015 demolition of houses which were unplanned. This in turn is helping in development hence making the law effective in protecting the environment.

⁷⁰ S.15 of the national environment (wet lands, riverbanks and lake shore management) regulation 2000 and section 2(p) on lead agency

⁷¹ S. 3 of Kampala capital city Act 2011

⁷² Article 35 regulations 18 of the Kampala capital city Act 2011

⁷³ S.22 KCCA Act 2011

The procedure⁷⁴ is that developers lodge in their applications to (KCCA) through the directorate of planning, whereby the department of urban management and land processing first confirms the availability of land, the space therein, its location and status while receiving the building plans that are later scrutinized by the technical officers. That includes town planner, health inspector, land officer and the city engineer. The essence is that all technical issues must first be addressed including environmental issues and this process coordinated by the town clerk while at the district⁷⁵, is under the executive director who coordinates activities in the city.

4.3.2 The media.

This body has played a big informative role within the public. However, the media is supposed to create awareness on environmental matters, mobilizing support for environmental management and effectively reporting on the benefit for conserving environment. On the other hand, report threats to environment especially matters related to pollution, degradation, reclamation and any other related matter affecting environment.

It is prudent to note that it requires collective efforts for the above bodies to work towards environmental management making sure that the laws are implemented and caused great impact on the environment. Otherwise, the common saying that divided we fall shall take its toll on environment to the detriment of both current and future generations.

⁷⁴ *section 22(2) KCCA Act 2011*

⁷⁵ *section 33 KCCA Act 2011*

CHAPTER FIVE

OBSERVATIONS, RECOMMENDATION, AND CONCLUSION

5.1 Observations

Uganda has encountered very many obstacles in effective enforcement of environmental laws. They include financial constraints, lack of public awareness, and lack of locus standi among others.

Government in most cases has shown little interest and commitment to secure enforcement of environmental laws. Where there has been a breach of same, Government considers developmental issues over and above environmental issues.

Financial constraints or poverty have hindered most of the public from taking up environmental issues before courts of law or before bodies like NEMA. Hence they end up remaining with their issues unsolved. Most of the litigants have failed to rely on common law principles such as law of torts, nuisance, and negligence and yet these common law principles can be applied in the enforcement of environmental laws for the protection of environment in Uganda.

There are many laws that have been put in place to protect and preserve the environment. However, these laws are not provided for under a single Act and this has led to a lot of confusion especially on what regulation to be taken as applicable. Otherwise, the national environment Act⁷⁶ has greatly been relied on whereas there are also other Acts, providing for different organizations but aimed at protecting and preserving the environment, for example Article 254 provides for protection and preservation of the environment, the land Act provides for holding in trust wetlands for the people under section 44(1)⁷⁷ however the word holding in trust creates a lot of contradictions as though government is the trustee.

5.2 Recommendations

The researcher having observed and analyzed the data after taking various recordings has come up with recommendations as seen below:-

It is very true that the poverty level within the country Uganda is very high and therefore government should bring to reality the poverty alleviation funds as this will go a long way in

⁷⁶ *National Environmental Act cap 153*

⁷⁷ *land Act cap 227*

helping the poor to provide for their families, avail them with working tools and training of the personnel to educate the masses, this will help eradicate poverty.

Enforcement of environmental laws and regulations should be accompanied by public sensitization and awareness; it is true that sensitization has been going on. However, it is only a very small arm of the population that benefits and this has been attributed to poor funding. Therefore there is need to start mass mobilization to create a wider awareness on environmental degradation, the law in place and its penal sanctions since it regulates human conduct.

The cultural leaders who are respected members of the society may be encouraged to get involved in urging their subjects to comply with environmental laws without any legislation. For instance, Where a given culture makes it mandatory to plant a tree as part of ceremonial functions like customary marriages, the community would respond easily.

Religious leaders should create awareness among the congregation on the importance of environmental protection; that environment is God-given entity which deserves protection.

Government officials like ministers should come up with efforts to enforce environmental laws in their administrative capacities as was in the case of: **Minister of Health V Wood carb property ltd**⁷⁸. Where the minister succeeded in seeking for an order requiring a saw mill to cease emission of noxious gasses.

Free legal services should be provided to those who cannot afford the cost of litigation. Article 28 (3) e of the constitution of the republic of Uganda makes provision for free legal services for capital offences and those carrying a sentence for life imprisonment. Like wise, it should do so in cases of environmental matters where litigants cannot afford the costs of litigation.

Judges should use their discretionary powers judiciously for example in the case of **Green watch and advocates coalition for development and enforcement V Golf course holdings ltd**. The applicants were seeking on interlocutory injunction to restrain the respondents from constructing a hotel in a wetland. The judge declined to issue an interlocutory injunction on grounds which can be considered un resonable, that an injunction could not be issued against a land owner who holds a certificate of title, otherwise this would amount to violation of the provision of the registration of titles Act relating to indefeasibility of title. It is submitted that the discretion in

⁷⁸SA 155 (N) 1996

this case was not exercised judiciously because in view of section 44 of the utilization of land should be in conformity with the various laws like NEA.

There is need to reform the laws, the laws should be consolidated into one Act for easy reference other than looking at various Acts in search for provisions on the preservation and protection of environment e.g. wetlands, Otherwise if not done, then there will be confusion especially on what legislation to be taken as applicable. For instance there are many laws that are in conflict with one another for example, Article 237(1) of the constitution of the republic of Uganda provides for land belonging to the citizens of Uganda whereas-Article 237(2) b provides for government holding in trust for the people of Uganda protecting natural resources for the citizens. This in turns contradicts one another hence need for reform.

5.3 Conclusions

The research on enforcement of environmental law and its socio-economic impact on the environment in Uganda discloses that due to various laws or enactments, it has become very difficult to effectively enforce the laws as well conserve the environment and it is not until these laws are consolidated into one chapter that the desired goals of ensuring a safe environment might be defeated .

There is need to sensitize the public about the various laws on environment and its socio-economic impact since those t involved in degradation comprises of both the poor and the rich and there is also need to check on political interference that has led to poor results on conservation of environment .

It is prudent to note that after putting the laws in judicial review into a single chapter, roles should be set out for various organs under the same law and penal sanctions should be incorporated into these laws to punish those who violate such laws .

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APPENDICES

APPENDIX-A: OBSERVATION GUIDE

The researcher had to observe the following:-

1. Enforcement of environmental laws.
2. The Socio-economic impact of the laws on the population.
3. The Nature of the persons occupying environmentally degraded areas
4. The Nature of activities carried out in such degraded areas.
5. The Demeanor of the respondents while responding to question

APPENDIX B: INTERVIEW GUIDE

Respondents' identification/ particulars:

Names.....

Occupation.....

1. What do you understand by environment?.....
.....
2. What is the importance of protecting environment?.....
.....
3. What are the laws on environment in Uganda?.....
.....
4. Do you know any of instances when such laws have been violated?.....
.....
5. In case of violation, do you know the consequences there of?.....
.....
6. Do you know any institutional framework in place aimed at protecting the environment?
.....
7. If yes, what are they.....
.....
8. What environmental problems do you encounter in your area?.....
.....
9. In your view, what factors have contributed to the destruction of the environment in your area.....
.....
10. Has anybody in your area ever instituted a case in courts of law or any other authority in respect of environmental matters.....
.....
11. What recommendations do you suggest in respect of promoting environmental protection in your area.....
.....

4. If no, please give reasons why?

.....

.....

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.....

.....

.....

5. What steps should be taken to realize those mentioned objectives.

.....

.....

.....

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.....

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6. What should be done to enforce the existing environmental laws in Uganda

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.....

7. "Is there any need for new environmental laws?"

.....

.....

.....

.....

8. If yes, then what would be the likely impact?

.....

.....

.....

.....

END.