REPORT OF THE PROCEEDINGS OF THE

MAGISTRATES TRAINING WORKSHOP

IN

ENVIRONMENTAL LAW.

HELD AT
SUNSET HOTEL, JINJA

14TH -17TH AUGUST, 2005.

PRESENTED BY: GREENWATCH
P.O.BOX 10120
Kampala-UGANDA
TEL: 256-41-344-613
FAX: 256-41-343 787
Email:environment@greenwatch.or.ug

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Acknowledgements

We wish to express our profound gratitude to **NEMA** and the **Environmental Law Institute (ELI) Washington D.C**. for the financial support rendered to organise and convene this workshop.

We specially thank the **Judicial Studies Institute (JSI)** and its staff for the continued cooperation and their valuable contribution while organizing the workshop.

We acknowledge contributions and assistance from NEMA during preparations of the workshop. We also acknowledge assistance in form of materials from ELI that were used during the workshop.

We further acknowledge the efforts of Greenwatch staff who worked so hard to ensure that this workshop is a success.

Introduction

Four years ago, Greenwatch received a slot on the Annual Judicial Calendar of the Judiciary to conduct training for judicial officers including judges, registrars and magistrates in environmental law for a period of five years. The programmes are aimed at equipping judicial officers with information and knowledge on environmental laws, policies, rights, as well as duties to enable them handle environmental cases form an informed background.

Over the years, Greenwatch has received support in form of grants and financial contributions from ELI, World Resources Institute (WRI) of Washington D.C., UNEP under the Partnership for the Development of Environmental Law and Institutions in Africa (PADELIA) and NEMA.

In June this year, Greenwatch received funding from NEMA conduct training in environmental law for Grade I magistrates. Additional funding was also sought from ELIto conduct the same. Four training workshops have been held before for magistrates of the same caliber. It was realized that because magistrates are met with a many cases, it is important that they are equipped with knowledge and information on environmental laws, policies, principles and procedure in Uganda to enable them handle such cases from an informed background.

The workshops objectives included:

- To strengthen national capacities in legal and institutional concepts to develop skills, improve attitudes, motivations and commitments to sustainable environmental management;
- To create awareness and sensitivity to environment and related problems;
- To share experiences and basic understanding of the environment and its related problems.

Expected outcomes of the workshop were**:**

- increased knowledge on environmental management , laws and principles;
- clear understanding of emerging procedural issues in environmental law and
- increased awareness on environmental protection and management through the judicial process**.**

LIST OF ACRONYMS

EIA	Environment Impact Assessment
EIS	Environment Impact Survey
ELI	Environmental Law Institute
JSI	Judicial Studies Institute
LCs	Local Councils
NEA	National Environment Act
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NEMP	National Environment Management Policy
NGO	Non Government Organisation
PIL	Public Interest Litigation
UNEP	United Nations Environment Program
WRI	World Resources Institute

OPENING CEREMONY

Welcome Remarks: By Mr. Kenneth Kakuru, Director –Greenwatch

Mr. Kenneth Kakuru began by welcoming the participants to the workshop on environmental law and policy in Uganda. He introduced himself as an advocate in private practice and said that Greenwatch is an environmental NGO that has been involved in environmental protection work since its existence in 1995. He said that Greenwatch has held several workshops to train different caliber of officers in environmental law issues. He stated that Greenwatch is currently involved in training district officials in the formulation of environmental ordinances in Rakai, Bugiri and Luwero districts after having successfully completed training of officials in Mbale and in Tororo.

He said because environmental law is a new discipline, which has not been taught at undergraduate level until very recently, there is a need to train judicial officers and to equip them with skills and knowledge in environmental law. Environmental law is very wide and includes land law, law of tort, issues of trespass, pollution which all encompass environmental issues. He noted that many conflicts in society have their origins in conflicts over management and use of natural resources.

He noted that before 2000 there were almost no decided cases on environmental law in Uganda. Since then however many cases have been brought to court and very important decisions made in environmental law. Greenwatch has complied a casebook on environmental law with decisions from Uganda. He thanked National Environment Management Authority for supporting Greenwatch in this initiative and providing funding. He paid special tribute to the Environmental Law Institute Washington DC and to John Pendergrass in particular for helping to start this judicial training in Uganda, funding the training since 2000 and continued support especially in availing materials and cases in environmental law.

Remarks by Ms. Christine Akello (Legal Counsel, NEMA)

Ms. Christine Akello made general remarks on behalf of the Executive Director of NEMA, Dr. Aryamanya Mugisha. She said NEMA is honoured to have an opportunity to share experience with the judiciary on environmental issues. The essence of the workshop was to popularise environmental laws, which are in the constitution both civil and criminal aspects to ensure the environment does not remain an obscure issue. She emphasized the need for continual awareness raising of the police force in order to step up the investigative aspects of environmental crimes.

She also said that it was crucial for different stakeholders to ensure that the environment is protected not only for its own sake but also for human beings in order to promote environmental sustainability and avoid compromising for future use. She noted that the general perspective among the magistrates was that they had come across few cases concerning the environment.

She thanked Greenwatch for organizing the workshop and also the Judiciary for their prompt response in organizing dates and participants for the training.

Official Opening Remarks by His Lordship Justice D.K. Wangutusi, Executive Director, Judicial Studies Institute.(JSI).

His Lordship Justice Wangutusi officiated at the opening of the magistrates' workshop on environmental law and practice.

Justice Wangutusi remarked that he was greatly honoured to officiate at the workshop. He noted that the programme though detailed called for participation in the discussions citing the inclusion of the moot as a live simulation exercise, which is important. He stated that the workshop was timely at a point when the environment was being massively degraded and therefore required protection.

He said environment has been recognized as a priority even in the Ugandan Constitution, which mandates the State of Uganda to promote sustainable development and public awareness. This would include the magistrates and others in charge of environment management like District environment management officers. Article 2(37) of the Constitution directs that those who spoil the environment must be brought to book hence the participation of magistrates was necessary to ensure the law was enforced.

He added that the judiciary recognizes the important role magistrates play in the administration of justice and in resolution of disputes related to use and ownership of natural resources, hence they should use it to be able to talk to people about the environment because the vast majority of the population rely on the environment as a source of livelihood. He emphasised the importance of magistrates as a big pillar in the economic development of the country. He stressed the need for magistrates to widen their competence and undergo continuous training at all times to prevent carelessness and complacency because the environmental issues are not static.

He commended the Judicial Studies Institute, NEMA, Greenwatch and ELI for their untiring effort to train Judicial officers and emphasised the importance of continued judicial training which would enable magistrates emphasize the rule of law. He pointed out the need for judicial officials to have a moral strength and efficient judgment and encouraged the magistrates to speed up on their judicial activism with the knowledge they would acquire from the workshop.

He thanked Greenwatch, ELI, NEMA and the JSI for organizing the environmental workshop and extended his gratitude to participants for finding time to attend the workshop and encouraged them to put to use what they had learnt.

He wished the participants fruitful deliberations and declared the workshop officially open. (Detailed speech contained in annex 1 herein)

Overview of Environmental Problems in Uganda: ***By Mr. Charles Akol, Director, District Support Co-ordination and Public Education, NEMA.***

Mr. Charles Akol began his presentation by defining the environment under the NEA Cap 153 which includes air, water, Biological factors like animals and plants, social factors like the natural and built environment. He noted that man is a very important aspect of the environment.

He observed that concern for the environment was a result of Uganda's over dependence on the environment to support human livelihoods. He said the environment needs to be protected because of the role it plays in serving as a sink to absorb and recycle waste, providing important elements that stabilize the global climate and filter out waste.

He noted that Sir Winston Churchill once described Uganda as the "Pearl of Africa" because of the wealth and beauty of our natural resources. He observed that the country had changed since, due to over exploitation and degradation. Hence whatever little of our beauty that had remained has to be protected and maintained. He observed that the quality of our natural resources had reduced and so had the productivity. This, he said, was attributed to population increase, poverty, low levels of environmental awareness and ignorance.

He said wetland degradation was a big problem that needed to be addressed as wetlands cover about 13% and are important for the economic development of the country for instance the Nakivubo wetlands which contribute US$1.7annually. He attributed this degradation to reclamation of land for cultivation, which arise out of population growth, drainage for farming, industrial growth and decline in productivity of soils. The reclamation of wetlands has resulted in shortage of water and fish, and as a result increased in floods and water pollution, which has increased the costs of water because of the high costs of treatment of chemicals or waste from agricultural fertilizers.

He noted that land degradation is one of the major problems in Uganda because the majority of the population depends on land as a source of their livelihood. Agriculture in Uganda is based on rudimentary technology and hence people cannot increase productivity per unit areas. Thus Deforestation is also a major problem, which has resulted in soil erosion and loss of soil fertility. He cited Tororo and Kumi as areas where there is acute shortage of building poles and wood fuel, which is as a result of deforestation. This is worsened by the dependence by 96% of the population on woodlots and forest resources for energy.

He listed other environmental problems like atmosphere and noise pollution from discos and Pentecostal churches, poor waste management both solid and liquid, which are destructive to the environment. He said many of the conflicts that we are dealing with are related to acute shortages of resources on the environment i.e. land, cattle rustling, e.g. in Karamoja where because water shortage has led to conflicts over land for grazing livestock in the neighboring districts of Katakwi and Soroti.
He summed up his presentation by highlighting measures that had been put in place to address the issue of environment degradation which include: setting up institutions to address environmental issues like NEMA, training for capacity building and awareness raising and constitutional provisions.
(See annex 2 for detailed presentation herein)

Discussions
Participants noted the persistent increase in land degradation in the modern economy despite the favorable political climate in comparison to the colonial era. There was also concern that the introduction of Nile Perch had led to the depletion of many fish species like Nandere, Kasulu. Most participants stated that an EIA should have been carried out before introducing alien fish specie.

The persistent increase in land degradation was attributed to two factors namely 1) the reliance of the majority of the population on land as a source of livelihood, which has resulted into poverty and lack of alternative sources and continued reliance on land.

2) Change in the enforcement systems i.e. the chiefs who played a vital role during the colonial era have been replaced by the Local Council which compromise because of elections and acquiring votes.

He also noted that as regards the issue of "too much democracy" and the need for command and control, it would be more effective to use incentives and disincentives as an alternative to reward those who have protected the environment and use disincentives through application of the law.

He reiterated the importance of chiefs in enforcement of the environmental protection, and said there is need to develop a mechanism to encompass the role of the chiefs vis a vis the local councils(LCs). He said that NEMA targets all levels of LCs and chiefs, hence as a country, there is need to review the roles of chiefs who are now under LCs in order to emphasize a nation of roles both in theory and in practice.

Participants also noted that it is not only the big developers who destroy the environment by reclaiming wetlands for construction but that the cumulative impact of individuals or small persons is great because of their inability to put in place mitigation measures to reduce on the impact. Big developers may therefore have an EIA approved because they have the means to put in place mitigation measures hence their ability to restore the environment differs. Thus repercussions differ, the extent of environmental degradation differs and so does their ability to respond. However, the common man is always the victim of degradation.

Mr. Akol further stated that NEMA had already carried out a survey on polythene carrier bags and containers known as "kavera" and made recommendations to government on possible means of fazing them out.

Administering Justice without undue regard to technicalities in Environmental matters: ***By Hon Mr. J.H. Ntabgoba, Consultant, Kampala Associated Advocates.***

In his presentation, Hon Justice Ntabgoba said the environment affects all aspects of life and man is the centerpiece of it all. He noted that because environmental law is an important aspect of the environment, there is need to sensitize the judicial officers and the courts about it hence the essence of the workshop.

He stressed the need to used human understanding as regards the law on issue like passing sentences and amount of fines to be paid. He said that court might have difficulty in deciding environmental issues hence magistrates need to be careful in making their decisions. They therefore need to read widely and adjourn when not sure of what they are dealing with.

He emphasised that whereas the law must be applied without undue regard to technicalities, the proper procedure must always be adhered to. He submitted that following procedure is not a mere technicality. The law includes procedure and both must be observed. He cited several judicial decisions in supplement of his contention.

He encouraged judicial officers to use judicial activism and to use discretion to the best of their ability in handling environmental matters. He concluded his presentation by appealing to NEMA to look at fines and imprisonment terms regarding the environmental crimes because they are too low.
(Detailed comments in annex 3 herein)

Discussion

Participants raised queries on the best possible course of action to take when there is judicial malice. They wanted clarification and interpretation on the phrase "subject to the law".

Justice Ntabgoba noted that where judicial malice occurs, it clearly shows judicial officials are using fear and favour rather than fair justice. He urged the magistrates to adjourn whenever they were unable to make a rational judgment in case of feelings like anger. He stated that it was the duty of a lawyer/counsel to defend the client but urged lawyers to desist from doing so for the sake of money or when it would result in bringing falsehood to the law.

Participants also questioned the role of a judicial officer as regards the law, that is whether the judicial officer should look at the law strictly and apply it as it is.
His Lordship remarked that the law should be given liberal not strict interpretation in order to have substantive justice. The critical point was how liberal or strict should the law be interpreted. He said a presiding judge or officer should make his own judgment but whatever decision they give should be backed with reason.

The judicial officer should therefore administer the rules of procedure or else a higher court would overturn a ruling because this was not followed. Participants noted that the fines and imprisonment sentences for environmental crimes were too low/lenient hence there was need to formulate new resolutions on this as well as on judicial activism.

Overview of the Legal and Institutional framework governing Environmental Management in Uganda: *By Ms. Christine Akello, Senior Legal Counsel-NEMA*.

Ms. Christine Akello began her presentation with a brief on policy. She informed participants that NEAP began in 1990 before NEMA came into being and that one of the key objectives of environmental management is sustainable development, which necessitated the revision and modernization of sectoral polices, legislation and regulations. This created a need to establish an appropriate institutional framework governing environmental management.

She said the overall objective of the National Environment Management Policy (NEMP) of 2004, was sustainable development. She cited the right to live in a clean and healthy environment in the Uganda Constitution, which carries the responsibility and duty of conservation and preservation of environmental aspects as well as optimum resource use and public awareness.

She listed the key environmental principles on which environmental management is based which include:

1. A Constitutional right to a clean and healthy environment
This comes with a responsibility and as the environment can not be managed by one sector, there is need to have link with different sectors like Uganda Wild Life Authority and the different Ministries in order to efficiently deal with various issues like conservation of bio-diversity and wetland management. The environment belongs to us all therefore it protected. Other policies also exist like the Water Policy/Water Act, which work alongside the NEA.

She stated that the creation of NEMA was a result of the need to separate this body from the ministry though NEMA has an inter-ministerial committee with the Prime Minister as its head. NEMA also has technical committees, which deal with soil management, pollution, bio-diversity and EIA, as well as linkages with UWA, and works with the District Environment Committees and the District Environment Officer at the district level.

2. Enforcement of environmental law in Uganda.

The Constitution is the supreme law and provides for environmental protection and conservation. All citizens have the right to a clean and healthy environment, which can be enforced by individuals or a group. The doctrine of Public Trust is intended to protect natural resources like water, land, minerals, flora and fauna for the benefit of the people of Uganda.

The presenter said there are also environmental principles under the National Environmental Act which provide for the need for conservation and reclamation of natural resources and the need to establish environmental standards. The precautionary principle entails generating data on environmental quality and resource use and dealing with offenders. She cited Art 2(237) (b), which is repeated in the land Act section 43 and 44, on managing land in accordance with the natural laws- "Any person who owns or occupies land shall manage and utelise the land in accordance with the Forest Act, the Mining Act, the National Environment Statute, 1995, the Water Statute, 1995, the Uganda Wildlife Statute, 1996, any other law."

Implementation tools include the following:

- Use of environmental planning hence the National Environment Action Plan, which is revised every 5 years to ensure planning is not static and that development activities are harmonized with the need to protect the environment.
- The use of monitoring and impact assessment which includes self monitoring and enforcement monitoring through government agencies such as NEMA. An EIA needs to be conducted on investment projects that are likely to have adverse effects on the environment.
- Environmental Audits to ensure environmental standards are taken into account
- Environmental standard setting and licensing to ensure standards are complied with. For instance with regard to river banks and lake shores, setting the no encroachment zones within 100metres of major rivers and within 200metres of major lakes.
- Performance bonds and restoration orders issued by NEMA and courts of law to people whose activities are likely to cause/have already caused environmental harm.
- Record keeping and inspections –NEMA is in the process of gazetting inspectors in different fields.

She stressed the need for public awareness and the use of easements and incentives to access the courts of law. Other tools highlighted include the use of criminal law and community service orders.

She concluded by noting that the mentioned tools provide regulations as well as a mandate for the public and the stated authority to manage and protect their environment like the Local Government Act which mandates the District officials to manage resources in their districts. (Detailed discussion in annex 4)

Overview of the practical issues faced in the enforcement and implementation of environmental laws in Uganda: ***By Mr. Justin Ecaat, Director for Environment Monitoring and Compliance, NEMA.***

In his paper read for him by Mr. Kamanda, Mr. Ecaat defined enforcement as a set of actions government or other mandated persons, take to achieve compliance to certain requirements within the regulated community and to halt situations that endanger the environment or public health.

He stated that NEMA has audits, which are conducted in the regulated communities although a number of people are still not aware of the environmental laws concerning this. He cited an example of Kajansi where an abattoir was put in a wetland, which is contradictory to the law. He noted that the increase in tax on "kaverea" was effected to act as a disincentive to users to curb on environmental degradation

He highlighted some of the challenges in enforcement which include: lack of individual responsibility whereby people treat the environment as NEMA's responsibility, issuance of Land titles in wetland areas by the Central and Local Governments, lack of enforcement capacity at all levels, poverty which leads to encroachment on natural resources especially forests and wetlands.

He concluded by emphasizing the need for all various sectors including the public, NGO's and civil society to play their role in order to achieve meaningful enforcement.
(See annex 5 for detailed presentation)

Discussions
In the ensuing discussions, it was noted that magistrates do not have access to the Acts/ Regulations governing environmental protection and management – a compendium. It was communicated that NEMA is in the continuous process of public awareness with the police, NGO's and the judiciary and that some environmental legislation have been distributed to some courts.
Participants noted that although Public Litigation may differ to some extent from representative suits, some Public Litigation matters can be taken under representative suits.

Queries were raised regarding the extent to which NEMA's orders and regulations are enforceable and why emphasis is on controlling degradation but non on improvement, and how NEMA carries out inspections.
Participants were informed that enforcement is a process and starts with environmental inspection. Inspections are also sometimes initiated after complaints or they may be routine. A report is written and advice is offered which may be adhered to or rejected. Restoration orders are then issued; if these are not followed the offender is jailed as a last alternative. Some inspections are done productively to check whether the EIA regulations they carried out are being complied with. It was also noted that NEMA first deals with creating awareness before enforcement hence may move at a slow pace. Greenwatch was cited as an example of experts who play a role in awareness creation; NEMA recognizes such key promoters of the Environmental protection.

Participants were informed that wetlands have been identified and demarcated and are clearly defined by the law. NEMA experts also know the type of plants like and animals like sitatunga which use wetlands as their habitats.

Clarification was made on the enforcement mechanisms. It was noted that community service should be used where the prison term is less than two years for restoration orders to be more effective.

Participants also noted that peer review can be used as an alternative way of encouraging compliance.

Access to Environmental Justice. The role of Judiciary and legal practitioners: Experience and lessons learned: ***By Hon. Justice Ruby Opio Aweri, Judge of the High Court of Uganda, Kampala.***

In his paper read for him by Mr. Kenneth Kakuru, Justice Opio Aweri noted that it is necessary for the Judiciary and legal practitioners to have a clear understanding of environmental problems and a creative vision on how the law can deal with them. He said environmental law is relatively new as it is in the process of being moulded which requires the judiciary to play a vital role.

He stated that man derives his survival from the environment and yet has not been living on earth responsibly. Thus the need to use law to protect the environment and sustainable development becomes crucial hence the role of legal practitioners and the judiciary. He cited the Johannesburg principles, which were formulated to guide the judiciary in promoting goals to sustainable development through the application of the rule of law and democratic principles. These principles were based on considerations, which showed that since the Rio Declaration of 1992, the issue of access to environmental justice has taken global and national dimensions. Considerations mentioned include:

- The deficiency in the knowledge, relevant skills and information in regard to environmental law which is one of the principal causes that contribute to lack of effective implementation, development and enforcement of environmental law.
- The importance of ensuring that environmental law in the field of sustainable development feature prominently in academic curricula, legal studies and training at all levels, in particular among judges and others engaged in the judicial process.
- The judiciary well informed of the rapidly expanding boundaries of environmental law and aware of its role and responsibilities in promoting the implementation, development and enforcement of laws, regulations and international agreements relating to sustainable development, plays a critical role in the enhancement of public interest in a healthy and secure environment.
- The need to strengthen the capacity of judges, prosecutors, legislators and all persons who play a critical role at the national level in the process of implementation, development and enforcement of environmental law.

He cited cases to illustrate aspects of access to environmental justice like cause of action, Locus Standi and public awareness. In the case of ***Greenwatch vs. Attorney General and another, Miscellaneous Cause No.140/2002***, Ag. Justice Lameck N Mukasa made several landmark pronouncements on several aspects of access to environmental justice. The learned Judge also made references to the Constitution and emphasized the need for the bench and the bar to stand for those who cannot speak for themselves as a Constitutional duty.

He concluded his presentation with recommendations that would encourage a fair access to environmental justice. (Refer to annex 6 for detailed presentation)

Public Interest Litigation in Uganda. Practice and Procedure: Pitfalls and Landmarks*: By Phillip Karugaba, Advocate, Partner MMAKS(Advocate), Lecturer , Makerere University..*

Mr. Philip Karugaba said his paper would focus on three issues, namely: Public Interest Litigation, what it is and what the law says about it. He said litigation is brought to enforce or protect rights by the public or large parts of it. He defined Public Interest Litigation using an Australian test which states that PIL must affect a significant number of people, must raise matter of broad public concern and must be addressed for the common good.

He cited a case of ***Kikungwe Issa Vs Standard Bank Misc.394/395 of 2004*** where Justice Kiryabwire said he would grant Locus Standi to an individual who had sufficient interest in the matter. The presenter noted that one is required to show they have tried other measures of redress before coming to court. He also said that we have a Biblical mandate –Proverb 31:8-9, to defend the rights of the poor and the needy and on fair justice. He highlighted actions that do not affect an individual litigant but a majority of the people. Examples given include the political rights petition by Dr. James Rwanyarare and Dr. Paul Ssemogerere, Teso petition on security rights against the Karamojong because of Government's failure to protect them from Karamojong raids.

He said the law on Public Interest Litigation was therefore to protect peoples' rights and cited Article 50(2) "Any person or Organisation may bring an action against the violation of another person's or group's human rights". He emphasised the importance of the Constitution which prevails over other executions and said there is need to know the competent court which is to "interprete", "enforce", and to "apply" issues. (See annex 7 for details)

Discussions

Participants noted that although Principles and Directives of state policy in the Constitution are not part of the main body of the Constitution, but that the courts must look at the Constitution as a whole. They acknowledged the need to discuss issues taking note of a wider scope as well as national interest, like The International Convention International Trade of Endangered Species(CITES), which lists chimpanzees as animals that need to be protected. Old laws were exploitative because of the colonial state hence the new laws are meant to benefit the citizens not to exploit them of their natural resources. They however noted that justice is not inherent but sometimes favors the interest of a stronger party.

Queries were raised on the best alternative to take rather than canceling their licenses in instances where a school is polluting the environment through latrines. Mr. Philip Karugaba cited the case of ***Kanyerezi vs Rubaga Girls*** where action was taken against a nuisance. He reminded participants to apply Article 50 to nuisance. He also highlighted the role of the Local Environment Committees in protecting the environment by dealing with people who do not enforce environmental protection measures.

Participants recommended the co-operation of all people at their various levels in environmental management. This is because environmental law is very wide with a vast number of organisations that need people who have knowledge on environmental protection, opportunities are available yet man power is lacking.

General Principles of Environmental law: ***By Mr. Kenneth Kakuru, Director Greenwatch***

Mr. Kenneth Kakuru began his presentation with a brief history of environmental law, focusing on its religious, cultural and historical roots which would enable us to appreciate its principles. H e traced environmental law from early 15th century to the 20th century in England. Then he illustrated how modern environmental law has evolved since 1945.
The right to a clean and healthy environment came about after the Second World War where the use of bombs and fertilizers showed the necessity of tackling the environment on a global scale. It later culminated in the Earth summit of 1992 in Rio de Janeiro where it was decided that every country must take action to reverse environmental degradation.

The phrase "sustainable development" was coined in the Earth summit in order to balance development with environment protection, so that the rate of use of renewable resources does not exceed the rate of rejuvenation. This all revolves around man who has a right to a clean and healthy environment but also a duty to maintain a clean and healthy environment. This is incorporated in the 1995 Constitution of Uganda. All this was geared towards public participation in sustainable management of natural resources.

The principles of environmental law discussed include the following:

- The precautionary principle which extends to the principle of prevention of environmental damage to situations of scientific uncertainty. Hence the origin of an EIA to predict whether the action is going to damage the environment and so put in place mitigation measures, or where there is uncertainty regarding the risk of harm to the environment of human life, take precaution as a regulatory measure.
- Intergenerational equity principle regarding people's proper use of resources in such a way that they do not deplete them and leave the earth bare but save it for future generations.
- The Doctrine of Public Trust which is provided for under Article 237 of the Ugandan Constitution. Government is just a trustee of the resources-lakes or rivers for the people of Uganda.
- Access to information, access to justice, sustainable development, user pays principle, and polluter pays principle.

He led the participants through the practical aspects of environmental law. Choice of parties, choice of courts, choice of procedure, how to bring evidence and how to argue the cases in court.

Access to information, Justice and the right to know: ***By Mr. Kasimbazi, Lecturer, Faculty of Law, Makerere University***

Mr. Kasimbazi said he was honored to address the participants and summarized his topic of discussion as a concept of access. This included access to information and the right to know. His paper was divided into five (5) sections namely; rationale of the concept of access, access under International law, access to environmental information, public access/participation and access to justice. He said these were the limbs of the 1992 Rio Declaration, principle 10.

He noted that access is necessary for environmentally sound decision making and equity as well as fairness in providing an opportunity for better sustainable and decision making-involving people. It also enables one to come up with alternatives and if possible mitigation measures. It helps in monitoring and enforcement.

Access in International Law, was a concept that was emphasised in the Rio Declaration. Agenda 21 chapter 3 of the Declaration places emphasis on the need to have individual groups and organisations knowing about and participating in environmental issues after having access to information, although it is not legally binding. If a civil society is not informed, they can not participate effectively. This was highlighted in the Malmo Declaration of UNEP 2000. Access to environmental information is cited under Art (2) which defines environmental information.

In the International context, every one has a right to freedom and expression. This would also involve public participation which is very important. The presenter noted that in some districts, wetland protection has not been enforced because of lack of community support especially in areas of high population. He cited elements of public participation which include notice, public consultations and public hearings. Barriers to public participation result from lack of information when people have no knowledge or idea-the concept "I don't know". This requires transparency in order for an issue to be magnified. Access to justice requires justice to be fair, procedural and substantive as well as access to an independent and impartial review body. He concluded his presentation by emphasizing that if a review is made, public authorities need to accept the decision.

Discussion

As regards the conflict between democracy and conservation, it was noted that democracy needs accountability which requires access to information and that the things required to protect the environment are also required for democracy i.e. demonstrations against a factory for polluting a neighbourhood, protection, thus democracy is linked to environmental protection.
It is therefore was the duty of a developer to undertake an EIA not that of the authority.

Article 42 of the Constitution was noted as a provision which allowed for information to be availed provided it does not prejudice security. It was observed that access to information differs from dissemination and that 2005 Act on Access to information curtails information through bureaucratic measures. It was therefore necessary to make information available to judicial officers through compiling case books.

Participants noted the need for Parliament to put in place laws governing access to information because the National Archive Act only governs storage and administration of material not the penalties of refusing access to information. They also noted that the problem of access to decisions in higher courts exists among themselves-magistrates.

It was observed that lack of knowledge was prohibitive to judicial decisions because judges still cited old cases due to failure to access recent decisions. The cost implication of access to information was also noted i.e. costs of photocopying and accessing cases on the internet. It was suggested that we emulate other judicial systems like that of Kenya which avail updated information up to 2005.
Participants were informed that the National Archive Act has provisions on how information that is considered secret can be released. However, some people are not aware of the National Archives Act and counsel lack interest in it.

Participants were encouraged to adopt a reading culture because information is available in printed materials like hand books to simplify information especially on criminal matters for police officials and the judiciary.
It was suggested that sharing of information would save a lot of time and avoid duplication.

The Criminal aspects of Environmental Law: ***By Mr. Vincent Wagona, Ag. Senior Principal State Attorney, and Directorate of Public Prosecutions.***

Mr. Vincent Wagona began his presentation by listing some of the methods for attaining environmental protection. These include inspections, negotiations, compliance, civil litigation and promotions. He said his paper would focus on criminal prosecution as one of the methods of environmental protection.

He defined environmental crime as any acts or omissions leading to degradation of the environment and resulting into harmful effects to flora, fauna and natural resources. He also said it was a violation of environmental laws. He noted that the previous (traditional) criminal law did not provide for environmental protection, however, there are some provisions in the Penal code Act which help in protecting the environment. These include S.176-Fouling water, S.160-Common nuisance etc.

The presenter noted that environmental offences are identified in the NEA Cap Act.153. He cited other laws which are subsidiary legislation under the Act which include The National Environment(Wetlands, Riverbanks and Lake shores Management)Regulations-S.13 of 2000, The National Management (Waste Management)Regulations of 1999 etc. Other offences related to environmental standards, air, water, wetlands, riverbanks and other aspects of the environment and to record keeping. He stated that there are standards to govern environmental aspects like air, hilly and mountainous areas. He said prosecutors inmost cases pray for deterrent sentences and high fines because of the high costs caused by degradation.

He emphasised that the law requires every developer of a project to present a brief on the project then under take an EIA. Failure to do so amounts to an offence with a fine not exceeding eighteen(18) million Uganda shillings. Every body has a duty to protect the environment.

He concluded his paper by stressing the need for coordinated and concerted effort by all concerned if a positive contribution to the environment protection by our criminal justice system is to be attained. (Detailed paper in annex 8)

Discussions

It was noted that the fines levied on developers who degrade the environment was too low. There is need to review the fines and prison sentences. Environmental issues should therefore be criminalized.

The participants noted that one does not require to take into account prior conviction, but only do so when considering subsequent conviction for another offence. As regards proof beyond reasonable doubt, he said environmental experts come in with opinions based on previous acts and experiences to show the likely impact would endanger the environment rather than to use speculation.

Clarification on the term “likely to cause harm” raised questions on whether you look at the activity carried out by the person or the intended outcome of the activity. Participants also raised doubt on how one can know that an activity is likely to cause harm because conviction can not be based on opinions but rather on fact. This was seen as a practical problem which is based on speculation and likelihood hence presents a practical difficulty. However, when charging someone on the likelihood,

you can show the action did occur or the acts would have led to something. It was noted that you can rely on the fact that previous similar acts testified to by an expert have led to that same outcome.

He said project planners will be made aware of the results of the findings when there is a possibility of an impact on the environment so that they may take the necessary measures. He emphasised the need to take initiative to clean up the community while also sensitizing and creating awareness to the masses.

LIVE SIMULATION EXERCISE

THE MOOT

Participants were divided into two groups, each representing a law firm : Firm A and Firm B.
Firm A was to represent the plaintiffs and firm B the respondents. The participants in their groups drafted pleadings, identified issues and decided on the procedure , the law and relevant authorities. The moot question is annexed (annex 9)

PROCEEDINGS:

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
Misc. cause no. 0100 of 2005.

ECOWORLD LTD. ========== APPLICANT

VERSUS

ATTORNEY GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY } ==RESPONDENTS
GREEN ROSES }

NOTICE OF MOTION
(Under Article 50 of the Constitution, S.I. 26 of 1992)

TAKE NOTICE THAT this Honourable court shall be moved on the 17th day of August 2005 at 9:00 in the fore noon or soon thereafter as counsel for the applicant can be heard on application for orders that:

1. The permit granted to 3rd respondent be declared a nullity.
2. That the second respondent be compelled to ensure that a complete environmental impact study be conducted by the 3rd respondent.
3. The 3rd respondent be restrained permanently from carrying out any developments in Lutembe Forest reserve.

TAKE FURTHER Notice that this application is supported by the affidavits of Mrs. Jova Musoke and Joshua Obonyo shall be read and relied upon at the hearing of the application but briefly the grounds are that :

1. The Government issued Green Roses Ltd. a 99 year flower growing permit in respect of Lutembe Forest reserve in contravention of the Constitution and the Law.

2. That no Environmental Impact Assessment was submitted and or carried out by Green Roses Ltd. as required by law of the second respondent.

3. That the second respondent award of a land use license/permit violates the applicants and other Ugandan citizens' right to a clean and healthy environment as well as protection of the country's natural resources.

4. That unless this application is granted, the applicant and other citizens of Uganda will suffer irreparable damage and loss resulting from the violation of their right to a clean and healthy environment as well as the failure to protect their natural resources.

DATED this ---------- day of ---------- 2005.

_____

REGISTRAR

DRAWN AND FILED BY:
FIRM A &CO ADVOCATES
P.O. Box 1
JINJA

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
Misc. cause no. 0100 of 2005.

ECOWORLD LTD. ========== APPLICANT

VERSUS

ATTORNEY GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY } ==RESPONDENTS
GREEN ROSES

AFFIDAVIT IN SUPPORT

I Joshua Obonyo solemnly make oath and swear that:

1. I am a male adult Ugandan of sound mind with the capacity to depone this affidavit
2. I am the Executive Director of ECO-world and deponing the affidavit in that capacity
3. That the Government has granted Green Roses Ltd. a 99 year permit under the Forests and Tree Planting Act illegally.
4. That no Environment Impact Assessment was submitted and or carried out by Green Roses Ltd. as required by the second respondent which contravenes the law.
5. The second respondents award of a land use license/permit violates the applicants and other Uganda's citizens right to a clean and healthy environment as well as protection of the country's natural resources.
6. Unless this application is granted, the applicant and other citizens of Uganda will suffer irreparable damage and loss resulting from violation of their right to a clean and healthy environment as well as the failure to protect their natural resources.
7. What I have stated above is true and correct to the best of my knowledge save paragraph 3 and 4 above which is based on information from my counsel.

Sworn at Jinja this --------Day of August 2005

Deponent

Before me

Commissioner of oaths

DRAWN AND FILED BY
FIRM A AND CO ADVOCATES
P O BOX 1,
JINJA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
Misc. cause no. 0100 of 2005.

ECOWORLD LTD. ========== APPLICANT

VERSUS

ATTORNEY GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY } ==RESPONDENTS
GREEN ROSES

Affidavit

I Jova Musoke do solemnly make oath and swear that

1. I am a female adult Ugandan resident at Lutembe area on the shores of Lake Victoria
2. I am the Chairperson of Twekambe women's Group located at Lutumbe and depone this affidavit in that capacity.
3. That Twekambe women's Group is a registered with 150 members and sells tree seedlings.
4. That unless this application is granted other citizens of Uganda will suffer irreparable damage and loss resulting from the violation of their right to a clean and healthy environment as well the failure to protect their natural resources.

What is stated above is true to the best of my knowledge and belief.

Sworn at Jinja this --------Day of August 2005

Deponent

Before me

Commissioner of oaths

DRAWN AND FILED BY
FIRM A AND CO ADVOCATES
P O BOX 1,
JINJA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
Misc. cause no. 0100 of 2005.

ECOWORLD LTD. ========== APPLICANT

VERSUS

ATTORNEY GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY } ==RESPONDENTS
GREEN ROSES

AFFIDAVIT IN REPLY

I Sulaimani Waswa solemnly make oath and state as follows

1. That I am a male adult Ugandan holding the position of State Attorney in the Attorney General's chamber
2. That the Notice of Motion and the affidavit in support thereof do not disclose a cause of action against the first Respondent
3. That there are fundamental and incurable defects in the affidavit in support of the Notice of Motion and therefore the Notice of Motion can not stand.
4. That the application is improperly before the honourable court
5. That permits and license issued to the third respondent were issued in accordance with the law
6. That all that is stated above is true and correct to the best of my knowledge.

Sworn at Jinja this --------Day of August 2005

SULAIMANI WASWA
Deponent

Before me

AGABA AMOOTI
A Commissioner of oaths

DRAWN AND FILED BY
ATTORNEY GANERAL CHAMBERS
P O BOX 88,
KAMPALA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
Misc. cause no. 0100 of 2005.

ECOWORLD LTD. ========== APPLICANT

VERSUS

ATTORNEY GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY } ==RESPONDENTS
GREEN ROSES

AFFIDAVIT IN REPLY

I Liliane Buchana of National Environment Management Authority make oath to state as follows:

1. That I am an adult female Ugandan holding the position of Executive Director of the 2nd respondent and swear this affidavit in this capacity
2. That ground number 3 of the Notice of Motion is denied as the 2nd respondent has never issued a permit/license to the 3rd respondent
3. That I am informed by my counsel that the application to the affidavit in support thereof do not disclose a cause of action against the 2nd respondent
4. That the project of the 3rd respondent will not cause any environmental danger to Ugandans. In any case, Ugandans are going to greatly benefit from the 3rd respondent's project
5. That no evidence whatsoever has been advanced in the affidavit in support of the motion to show the nature and extent of environmental degradation likely to be suffered by the applicant
6. That the 2nd respondent did not find it necessary to issue an EIA as it found the 3rd respondent's project brief sufficient
7. That all that is stated above is true and correct to the best of my knowledge save for the contents of paragraph 3 which correct to the best information whose source is disclosed above.

Sworn at Jinja this --------Day of August 2005

LILIANE BUCHANA
Deponent

Before me

AGABA AMOOTI
A Commissioner of oaths

DRAWN AND FILED BY
LEGAL DEPARTMENT, NEMA
KAMPALA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
Misc. cause no. 0100 of 2005.

ECOWORLD LTD. ========== APPLICANT

VERSUS

ATTORNEY GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY } ==RESPONDENTS
GREEN ROSES

AFFIDAVIT IN REPLY

I, Rugunda Agatha of C/O Green Rose Ltd make oath to state as follows

1. That I am an adult female Ugandan of sound mind holding the position of Director of 3rd respondent and I swear this affidavit in that capacity
2. That the Government of Uganda acting in accordance with the law granted the 3rd respondent a 99 year permit SEE ANNEXTURE A
3. That the Uganda Investment Authority acting in accordance with the law acting in accordance with the law granted the 3rd Respondent a license SEE ANNEXTURE B.
4. That the 2nd Respondent dispensed with the requirement for carrying out an Environment Impact Assessment having found the 3rd Respondent's project brief sufficient SEE ANNEXTURE C.
5. That no evidence whatsoever has been adduced by the applicant to show the nature and extent of environmental degradation that is likely to be suffered by the applicant/ Ugandans
6. That the 3rd Respondent's project is going to benefit Ugandans greatly
7. That all that is stated above is true and correct to the best of my knowledge

Sworn at Jinja this --------Day of August 2005

RUGUNDA AGATHA

Deponent

Before me

AGATHA AMOOTI
Commissioner of oaths

DRAWN AND FILED BY
ATTORNEY GANERAL CHAMBERS
P O BOX 88, KAMPALA.

THE REPUBLIC OF UGANDA

INVESTMENT LICENSE

THE UGANDA INVESTMENT AUTHORITY CERTIFIES

THAT GREEN ROSES LTD HAS THIS 20TH MARCH 2004

BEEN GRANTED A LICENSE TO CONSTRUCT

A FLOWER FARM AT LUTEMBE

ON THE SHORES OF LAKE VICTORIA

Signed,

MAGGIE KIGOZI
EXECUTIVE DIRECTOR,
UGANDA INVESTMNT AUTHORITY

THE REPUBLIC OF UGANDA

THIS IS TO CERTIFY THAT GREEN ROSES LTD

OF P.O BOX 2 KAMPALA HAS BEEN GRANTED

A 99 YEAR PERMIT UNDER THE FORESTS

AND TREE PLANTING ACT TO GROW FLOWERS

ON 300 HECTARES OF LUTEMBE FOREST RESERVE ON

THE SHORES OF LAKE VICTORIA.

Dated----------August 2005

Signed,

COMMISSIONER FOR FORESTRY.
MINISTRY OF LANDS WATER AND ENVIRONMENT.

To the Executive Director
Green Roses Ltd.

Dear Sir/Madam,

Project Brief on construction of flower farm at Lutembe on Lake Victoria shores

Please be informed that I have read the project brief for the above project and I have found it to be satisfactory.

You will therefore not be required to carry out an EIA for the said project and you may go ahead with implementation subject to the mitigation measures stipulated in the project brief.

Yours faithfully

AGABA C F
Executive Director, NEMA

Moot Proceedings

Application Hearing

E.K Kabanda Presiding Judge.

Firm A represented by Susan Abinyo, Lagara Michael and Daniel Lubowa
Firm B represented by Catherine Baine-Omugisha and Mary Kaitesi.

Mr. Lubowa made an oral application for an amendment with leave of court. He prayed to be allowed make four amendments to his pleadings. Court overruled the respondent.

Baine-Omugisha objected to the oral application and said the law requires the application to be made in writing. She said counsel for the plaintiff had not given the defence a copy of the said document so this was an ambush. The documents should have been included. She added that counsel for the plaintiff came to court ill prepared therefore asking for an amendment orally would be unfair. Mr. Lubowa replied that it is trite law and that there should be no undue regard to technicalities. He asserted that oral amendments are allowed under the Civil Procedure Rules(CPR) and said it would not be unfair in any way.

Her lordship ruled that it is law, that amendments can be granted at any stage of proceedings under order 6 r8 of CPR. She however states that an amendment should not transform the suit into a different case all together. She noted that seeking to add the fourth respondent has that effect of adding entirely a new party and hence transforming the whole case of which the applicant should not be called unawares. Only one amendment to add the word "study" is allowed.

Ms. Baine –Omugisha raised objections in the court. Firstly, to the counsel for the applicant, saying none of them have Practising Certificates hence have no audience before court. She said she represents the 3rd respondent and holds brief for counsel for the 1st and 2nd respondent. Secondly, an objection relating to the propriety. Law requires a forty five (45) days notice but the application was not filed in court. She said the Notice of Motion she was served with has no stamp to indicate that court fees were paid, or a stamp of the court of Jinja. This does not indicate it was properly filed and in addition, there was no sufficient notice given that is, forty five(45)days. Thirdly, regarding locus standi, Ms.Baine-Omugisha said the application does not comply with order 128 CPR of authority to institute representative action. The applicant should have sought leave of court to file suit for a representative action. The applicant is therefore a wrong party with no action. Fourthly, there is no cause of action against all three respondents and in what capacity the first respondents are sued or how the third respondent has violated any right. The applicant failed to show he enjoyed a right which had been violated, so counsel for the defence submitted no cause of action has been done by the respondents.
Fifth, the failure to disclose the name of the commissioner for oaths on the three affidavits. She prayed that court ruled and dismisses the application with costs.

Reply.

i)**No Practising Certificate**
Mr. Lubowa said the first objection was flimsy because the three advocates had their P.Cs which would be availed to court to show they were properly enrolled.

ii) **Forty-five(45) day notice**: He said this has been discussed widely and cited Rwanyarare vs. Attorney General, saying cap 72 is incompatible with Human rights enforcement.

iii)**Locus standi**; counsel cited the case of TEAN vs Attorney General where a wide range of opportunity was provided to spiritual individuals especially where there was low literacy to file suit on behalf of the aggrieved members of the community. It was up to the applicant to proceed under Art 50 or order 1 r8 of CPR and the applicant chose the later.

iv) **Cause of action**: Regarding no cause of action against the three respondents , counsel said there is no need for the applicant to have a cause of action under this article because this is where the Doctrine of Public Trust comes in. He said the presiding judge commissioned the document which disproves the affidavit being fatal on the grounds that it does not disclose the name of the commissioner.

Ms. Baine-Omugisha said the affidavit should show the name of the commissioner, be it a magistrate whether of this court. If not, the affidavit does not stand. She prayed that the case be dismissed with costs to the respondents.

Reply:
Counsel for the applicant applied for orders for the permit given to the third respondent to be declared null and be restrained permanently from carrying out development in Lutembe beach. He supported his statement with two affidavits from Joshua Obonyo and Jova Musoke. The affidavits stated that no EIA was carried out yet this was a requirement. He noted that unless a permanent injunction is granted, the applicant and other citizens will suffer irreparable loss which would infringe upon their right to a clean and healthy environment. Her lordship noted this was under Art 50 of the Constitution and S.1 26/12.

However, counsel for the respondents requested her Lordship to let counsel for the applicant cite the law, rather than her guiding him to do so.

Counsel for the applicant further stated that granting of a period of ninety nine(99) year lease contravenes the Doctrine of Public Trust thus the permit and the license should be declared a nullity. It prohibits license by investment authority before impact assessment. Thus the permit and the license should be declared a nullity because the law requires a full EIA must be conducted. He cited the NEA section 19(5)c , depending on sensitivity of site, an impact study should be conducted. Considering this is a unique area where birds find haven, it will have significant impact, since the area is not going to be a forest but a flower farm an EIA must be conducted. Concerning the likelihood and extent of damage, he cited Greenwatch vs Attorney General where court held knowledge is a result of sensory understanding and long experience. Mr. Obonyo of Eco world is one such individual thus his affidavit should stand.

Her Lordship asked counsel for the applicant to comment on the issue of substance of application raised by counsel for the respondents and on paragraph 4 and 5 of Buchana's affidavit.
Counsel for the applicant held that Mr. Obonyo is a knowledgeable person and the introduction of genetically modified flowers would cause damage. He urged court to be guided by the precautionary principle t proceed cautiously. As regards the affidavit in reply of Rugunda, paragraph 4 and 5, it is a requirement of the law under section 19(5)that an EIA or review shall be conducted where a project may have an impact on the environment. This presupposes a mandatory obligation.

The project brief falls short of mitigation measures. He cited the paragraph "-----you shall not be required to carry out an EIA--". He found this insufficient and prayed the court tells them to carry out an EIA and refuse the third respondent from carrying on with the license.

Counsel for the respondents said there were three affidavits in reply. The first respondent had issued the permit within the law after they had seen there was no need to carry out an EIA. The discretion was properly exercised . the project brief was scrutinised and effects on future generations considered. It would not be necessary to carry out an EIA once the second respondent was satisfied that measures to protect the environment would be put in place. They were satisfied with the third respondents interest in the environment since it planned to plant trees in Karamoja. It is an agreed fact that the project was worth $150million. These are contained in the project brief which is not in contention. Paragraph 4 of Buchana's affidavit show Ugandans will greatly benefit from the project.

Counsel for the applicant said counsel for the respondent was misleading court that the project brief cater for the value of the project and measures are also not included in the brief.

Counsel for the respondents replied that annexure C is a letter from NEMA and made reference to a project brief which which says if the applicant intends to pray on the evidence of a project brief, it should have been annexed of the affidavit of the third respondent. So they should not adduce evidence which is not in the affidavits. She submitted that it is unfounded that birds will go away. The benefits by area occupants are higher than income they have been getting from forests. The third respondent has permit for 300 acres. This is not for the entire area so community can still access the rest of the area. It is going to attract investment and the benefits likely to be got by Ugandans are more than those they are getting now. She prayed for the application to be disallowed.

Counsel for the applicant replied that the Doctrine of Public Trust doe not give authority to lease out any land. The argument that court does not have any power to allocate any resource. Karamoja is different from Lutembe beach. There is no assurance that the damage is not going to be far reaching. The precautionary principle should apply. Counsel was certain of the benefits and a degree of destruction, so a permanent injunction should be issued. Discretion was wrongly exercised regarding the EIA because this is a unique environment that benefits a number of members and a natural resource. If we destroy it, it will have a significant impact on the environment so there should be an EIA. I rest my case.

MOOT RULING

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
Misc. cause no. 0100 of 2005.

ECOWORLD LTD. ========== APPLICANT

VERSUS

ATTORNEY GENERAL
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY } ==RESPONDENTS
GREEN ROSES

RULING: Before E.K .Kabanda- Judge

The Application is instituted by Eco-World the applicant on behalf of residents of Lutembe Beach on the shores of Lake Victoria, against the Attorney General, NEMA, and Green roses as respondents. Green roses the third respondent intends to develop a flower farm in the area. The application is by Notice of Motion supported by 2 affidavits. There are 3 affidavits in reply on behalf of each respective respondent.
I intend herein below to give you a brief ruling with brief reasons there of. I intend to give a detailed ruling at a later date, on notice. I have listened to the arguments of both sides.

1. First I am satisfied that under section 19(3) of the NEMA Act (Revised Edition.2000), NEMA had the discretion not to conduct or authorize the conduct of an Environment Impact Survey (EIS) under the circumstances of the case.
2. And secondly, the license was validly issued.
3. Thirdly, there is no sufficient evidence advanced by affidavit that substantial harm will be caused if the project were developed or that they outweigh the benefits by the community from the project.
4. Fourthly, I am as well satisfied the application was properly before the court under Article 50 of the Constitution which enjoins the court to follow the procedure under S.I 26/2002. In this I will defer with reservations (to be given in my detailed ruling), from the decision of the court of Appeal in on the fact that the procedure should be by Plaint other than Notice of Motion.

The applicant however failed to plead and show court that he has a cause of action in the matter. They only showed that there was an interest in the matter.
Lastly, Section 44 of the land Act could not be invoked because what was issued was a license permit and not a lease. As a permit would be withdrawn in event of breach of the conditions there under. The project license to the 3rd respondent therefore falls within the ambit of the 3rd schedule section 8 of the NEMA Act

In the final analysis, the application should fail with each party to bear their own costs.
So I order.

Signed
Kabanda E
Judge

17/08/05

Ms. Catherine Baine-Omugisha: for Respondents
Mr. Lubowa Daniel: for applicants

17/08/05
Court as above.
Ruling read in open court in presence of all.

Clerk: Mr. Tumwijukye. Matthew

Discussions

After the moot the participants discussed issues raised and the law applicable. It was generally agreed that the respondents had argued their case better than the applicants.

Response and comments to the moot.

Some of the participants stated that the judge was very biased, descended into the arena and did not give counsel for the defense time to argue their case. However it was noted that it is the duty of the court to come to a just decision and cited the example of Judges who guide people in the court room. The judge should not allow counsel to argue on grounds where decisions had already been made. It was also noted that presiding magistrates should come to a just and fair decision even when technicalities seem to hinder the position of an applicant i.e. non payment of court fees.

Regarding the issue of forty five (45) days' notice, emphasis was that the law is clear and though it is a statute, one needs to make a stand where decisions arise out of an argument.
In response to queries on civil procedure and the 45 days statutory notice, it was observed that this could be argued as a procedure for an ordinary suit, however, one can also show that this is not an ordinary suit because it is for enforcement of Human Rights or fundamental rights under Art 50. The procedure for Art 50 is specially set out under S.1. 26. This would therefore take precedent over the Constitution.

He also noted that as counsel, it is a question of presentation and how forceful you argue your case.
Participants noted that one does not have to be aggrieved to file suit in court but one should show sufficient interest in the matter.

On the issue of access to information, like project briefs, one can bring evidence to show that this kind of activity would cause a problem hence would require mitigation measures and an EIA. However, the respondent could argue that NEMA as the official natural resources management agency had granted the license with its whole panel of experts hence no one can disagree with them. The applicant could say that the Executive Director of NEMA had no authority to grant a license to a project of such a magnitude.

Mr. Kakuru cautioned counsel against the saying "I am not sure". He also cautioned against arguing the precautionary principle because it shows you are not sure, and this shows doubt. He stressed the

need to comply with the law and emphasised that every counsel must have a practicing certificate. He observed that small issues like defective affidavits, non-payment of fees can tie the hands of court and that weakness procedure of a case and suit can be fatal to the applicant.

Recommendations and Way Forward
It was resolved that:

- Judicial activism is encouraged as a way of promoting environmental justice and related matters.
- There is need to streamline land use appropriately
- More speedy enforceability of environmental laws/orders is done.
- environmental training be expanded country wide
- Article 126 of the Constitution be strictly interpreted
- Use of preventive measures and non-adversary methods in environmental issues is encouraged. Adversary measures should be a last resort
- Information and court decisions on environment matters to be availed to users
- Modern methods of dissemination like availing information on websites and the internet be employed
- Continued training at all levels of judicial hierarchy is done
- Sharing of information amongst the judicial officers is encouraged.
- more reading material on environmental law be availed to judicial officers
- More such workshops are convened as the time was too short to cover all relevant topics.

Closing remarks.

In his remarks, Mr. Kenneth Kakuru on behalf of Greenwatch thanked the participants for taking time off their busy schedules to attend the workshop. He said it was a pleasant experience to have interacted with them.

He reminded participants that nobody has a monopoly of information and urged them to share their information and knowledge by participating as resource persons in different workshops. He encouraged the magistrates to take interest in environmental issues through means like writing articles in their journals.

Ms. Christine Akello on behalf on NEMA gave remarks at the closing of the workshop. She remarked that learning is a continuous process which one never completes. She stated that NEMA engages a lot in public awareness workshops for the judiciary and the police and that there is need to go to the grass roots level because the levels of perceptions differ.

She emphasised NEMA's commitment to its continued partnership with Greenwatch and the judiciary and the need to link up with different sectors of the environment internationally. She encouraged the magistrates to access the NEMA website to enrich their knowledge on environmental issues and law.

OFFICIAL CLOSING CEREMONY

Mr. Henry Peter Adonyo, the Ag. Registrar, Research and Training in the courts of judicature officiated at the closing of the workshop. He expressed his gratitude for being invited to officiate at the closing of the workshop

He informed the magistrates that he was also a product of training in environmental law by Greenwatch. He urged the participants to be ambassadors in the field of environment and noted that it was important for us to take into account future generations and sustainability when using natural resources.

He encouraged the magistrates to train others especially on court open days because the environment is of great concern to all of us and hoped that what they had learnt would enable them to deal with their backlog of environmental cases.

He expressed his appreciation to the organizers of the workshop, JSI, NEMA, ELI and Greenwatch for organizing the workshop. He extended his thanks to the participants for taking time off their busy schedules to attend the important workshop. He also appreciated the dedicated efforts of the staff from Greenwatch and the Training Department of the Judiciary for their dedicated efforts towards making the workshop a success. (Detailed speech in annex 10)

WORKSHOP EVALUATION

1. Comments on the materials distributed

Participants stated that the materials were very resourceful and enlightening. The materials it was reported, provided excellent and relevant and comprehensive data which was sufficient for environmental cases.

2. Relevance of topics discussed

Topics identified for discussion were very relevant as they touched actual situations and enlightened the participants.

3. Resourcefulness of the presenters

On the whole, the participants found the resources persons knowledgeable because they cleared areas of uncertainty. In particular, Mr. Kakuru and Mr. Phillip Karugaba were noted as very resourceful.

4. How useful were the discussions

Participants found the discussions very useful, interactive and educative in line with the issues that were raised.

5. Duration of the workshop

The participants were of the view that the three days for the workshop were not enough. They felt four days or a week would have been better to effectively exhaust the topics.

6. How comfortable was the venue in terms of:

(i) Meals ? Good and satisfactory
(ii) Rooms? Clean and satisfactory
(iii) Recreation facilities? Not accessed

7. Relevance of the moot

The moot was found to be very relevant because it brought out most issues discussed in the workshop. It was also a good learning experience as it highlighted the practical aspects of an environmental suit.

8. Comment on the field trip

The field trip was found to be relaxing and educative and relevant because participants desired to see the surrounding area.

9. Areas recommended for improvement

It was suggested that the time allocated for discussions should be increased because it not adequate. More time is also needed for the moot so that participants are effectively prepared. The moot, it was advised, should be given out at the beginning of the workshop.

10. How we can improve our work

- Conduct more workshops
- Use venues far away from towns to avoid disruptions

ANNEX 1

SPEECH BY HON. MR. JUSTICE D.K. WANGUTUSI AT THE OFFICIAL OPENING OF THE WORKSHOP ON ENVIRONMENTAL LAW FOR MAGISTRATES, SUNSET HOTEL- JINJA 14TH- 17TH AUGUST, 2005.

My Lords,
Your Worships,
Distinguished Guests and Participants,
Ladies and Gentlemen.

I regard it as a great honour and responsibility to be asked by the organizers of this workshop to officiate at the official opening of yet another training workshop for Judicial Officers in the area of Environmental law.

The Judiciary recognizes the very important role Magistrates play in the administration of Justice. Magistrates meet with a much wider spectrum of the society than other Judicial Officers. They resolve disputes between a range of people and apply and interprete the laws of the land.

The vast majority of our people rely on the environment and natural resources directly for their livelihood. Inevitably, conflict over natural resources form the bulk of judicial disputes. These may include: disputes over land ownership, protected areas, access to water, wetlands and open water, fishing rights, contract, concessions, etc.

The conflicts may be between government and individuals or between communities, developers or investors and individuals or communities. They will come to you for adjudication. This training therefore is important as it equips you with the necessary skills and knowledge and expertise that you require in this role.

The trust and confidence the society places in our Judicial Officers must be reciprocated through a great sense of responsibility and integrity. In order to do this, it is imperative that not only must Judicial Officers be independent and courageous, but they must also maintain high standards of learning. These important attributes ensure that people will be Judged Justly in Courts and be able to enjoy adequate protection under the law.

I wish therefore to commend the **Judicial Study Institute, Greenwatch, NEMA** and **The Environmental Law Institute, Washington D.C**. for their untiring effort to train Judicial officers in Environmental law.

In view of the rapidly changing legal trends in general, and in the area of environmental law in particular, continued judicial education is extremely important. It needs to be underscored here that continued judicial education is a mandatory requirement for all Judicial Officers and is necessary for the development of our jurisprudence as well as the strengthening of the rule of law.

The importance of judicial training arises from the need to cope with the changing trends the world over. Training equips Judicial Officers with the most current developments in the world, not only in

Judicial matters, but also in other disciplines.

Environmental law principles are based on the concept of sustainable development,

> *"... development that meets the needs of the present without compromising the ability of future generations to meet their own needs."*

There can be no argument that an independent Judiciary is a critical element of a democratic society. It is a fact, which however, calls upon judicial officers to be in possession of the requisite intellectual and moral strength to discharge their duties with competence and fairness. And, it is my most considered view, that all this can be acquired only through Judicial education and training.

There is increasing realization of the fact that judicial competence requires more than just knowledge of the law. All Judicial Officers must, by necessity, develop skills which enable them to effectively serve the society and apply the law with due dispatch and accuracy.

I understand the workshop is intended to inter alia, to enhance your capacity and skills in adjudication of environmental cases, to raise awareness and to generate a common understanding of the environmental litigation process.

This is quite opportune, as we all know, that matters relating to the proper care of the environment in our country and everywhere else are assuming global concern. Judicial officers therefore require the necessary expertise to handle complex environmental cases that are bound to be brought to their courts.

It is my hope that the discussions will be able to show you how our courts can play their part in the protection of the environment, as well as how environmentally conscious citizens can be able to take lawful courses of action in arresting blatant destruction and degradation of the environment.

It is also my sincere hope, that the skills and experience, you will gain during this workshop will help to enhance your skills in this area generally as you are no doubt aware that environmental law is now clearly a permanent feature on the legal scene.

I am sure the workshop will also enable you to understand and conceptualise the legal and institutional framework governing the management of the environment in Uganda, as well as the procedural aspects of the same.

Looking at the program, it is clear that the workshop is highly interactive and participatory in nature. I must say, I am particularly excited by the inclusion of a moot on the program. This is commendable since your role as judicial officers is mainly practical and not passive. The days of the passive Judge are long gone.

These are days of judicial activism. I therefore encourage you to take full advantage of the opportunity given to you by Greenwatch at this workshop. I also urge you to take back the materials and the knowledge acquired through this workshop and to put them to good use; so that you are able to handle complex environmental cases more efficiently and expeditiously as a result of your training.

In conclusion, I would like to express my sincere appreciation to the organizers of this workshop, namely the JSI, Greenwatch, NEMA and the Environmental Law Institute(ELI) of Washington DC for organizing the workshop.

I wish to thank NEMA and ELI for sponsoring yet another workshop for the Judiciary.

We look forward to other similar workshops in the near future so that the entire judiciary is sensitized in Environmental laws.

I also wish to extend my thanks to you the participants for being able to find time from your busy schedules to attend this important workshop.

I wish you all fruitful deliberations during the workshop.

IT IS NOW MY PLEASURE TO DECLARE THIS WORKSHOP OFFICIALLY OPEN.

ANNEX 2

AN OVERVIEW OF ENVIRONMENTAL PROBLEMS IN UGANDA.

BY : CHARLES MICHAEL AKOL
DIRECTOR, DISTRICT SUPPORT CO-ORDINATION AND PUBLIC EDUCATION - NEMA.

1.0 Introduction

Environment as defined by the Uganda National Environment Statute, 1995, means "the physical factors of the surroundings of the human beings including; and, water, atmosphere, climate, odor, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both the natural and the built environment. The state of environment is a major worldwide concern because environmental assets provide three main types of services to the human society:

i) The natural resource base provides essential raw materials and inputs, which support human livelihood;

ii) Environment serves as a sink to absorb and recycle (often at little or not cost to society) the waste products of economic activity;

iii) Environment provides generalized services ranging from simple amenities to irreplaceable life support functions e.g. stabilization of global climate or filtering out harmful ultra-violate rays by stratospheric ozone layer.

In Uganda, the concept of environment protection is very much linked to the need to eliminate or reduce the risk of jeopardizing people's well being in the current and future generations.

Vital to the livelihood of millions of Ugandans are the country's diverse peoples and cultures, agricultural lands, lakes and rivers, fish and wildlife, pasture, woods and construction material. The importance of these resources for development in Uganda is demonstrated by the following:

i) Uganda is primarily an agrarian country with agriculture supporting over 80% of the population most of which is rural based. In addition, the agricultural sector, which is mainly

based on the natural state of the environment, contributes highest to the GDP (about 43% of the GDP)

ii) Energy is critical for the well being of the Ugandan community. Ninety-six percent of energy used in Uganda is woody biomass-based gathered from forests, woodlots and agricultural fields.

iii) The fisheries resources are a major source of animal protein as well as income for the people of Uganda. The fisheries sector contributes about 2% of the GDP.

iv) Eighty percent of Uganda's estimated 24 million today live in the rural areas. Sixty percent of these rely on lakes, rivers, wells and wetlands to meet their water needs, so do 25% of the people living in urban areas of Uganda.

The above few examples illustrate the important role environmental resources play in the development process in Uganda.

2.0 Key Underlying Concerns of Environmental Management in Uganda

Despite the above-demonstrated importance of environment in the development of the country, there are already signs of unsustainability of Uganda's development process. This evidenced by the wide array of environmental problems, which reflect loss of quality, stability, diversity and productivity of environmental resources. These environmental problems pose constraints to the people to earn income and have better standards of living. The underlying factors that have led to environmental degradation are:

i) Population growth

Following the last national population census, the population of Uganda is estimated at about 24.5 million having risen from about 2.5 million in 1911. This is an increase of about 1000%. This rate of population growth has led to sudden rise in demand of natural resources to meet the human basic needs.

ii) Lack of Public Participation of the local people in Environmental Management and Development Programs.

Until recently, most of the decisions and required actions for improved environment conditions and development were not targeted at the participation of the local community. This led to the alienation of people from these resources, loss of capacity and incentive for sound environmental management. Under these circumstances capacity in environment

management deteriorated, benefits were not equitable shared and where opportunity arose, resources were misused/exploited by the local people (who were the supposed beneficiaries), leading to their degradation or depletion.

iii) Poverty

Poverty is both a cause and a result of environment degradation. Poverty stricken communities will harvest any available resources, including cultivating in marginal or fragile ecosystems. This accelerates environmental degradation, yet the victims of environment degradation are normally the poor families and individuals in both urban and rural areas. While the wealthier individuals may cause environmental degradation, they may not be victims of degradation because they can afford the costly alternatives.

iv) Lack of Environmental Awareness

For meaningful interaction between the community and the environment, the communities need a good understanding and appreciation of the environment. This can only be developed through formal and non-formal environment education programs so as to build upon their indigenous knowledge. In the past environment educational and public awareness programs were lacking and therefore the community was not adequately guided in prudent resources use and management.

v) The other underlying factors for environmental degradation are:

- Poor planning of urban and rural settlements
- Lack of management and technical capacity at local government levels
- Inadequate enforcement of regulations;
- Lack of access to appropriate /efficient technology
- Inadequate private sector participation

3.0 Main Environmental Problems in Uganda

The above factors among others, have resulted into severe stress on the environment and development, leading into the environmental problems including the following:

3.1 Soil and Land Degradation:

Soil erosion and land degradation are highly pronounced in the country particularly in the hilly areas of South Western, Eastern and North Eastern Uganda. This is caused by deforestation and inappropriate farming methods. This has led to loss of soil fertility and hence decline in agricultural productivity. In addition, soil erosion leads to pollution and siltation of water bodies. Overgrazing, bush burning and deforestation among others are the causes of this problem. It is estimated that soil erosion accounts for 80% of total cost of environmental degradation in Uganda. Conservative estimates indicate that, soil erosions causes a loss of 4-12% of the Gross National product (GNP) per annum.

3.2 Deforestation and Loss of Wood Cover:

This is widespread in the country. Forest and woodland cover has declined from 45% in 1800s to the current estimated 21%. This is as a result of agricultural encroachment and uncontrolled charcoal burning and vegetation clearance. This has resulted into accelerated soil erosion and shortage of wood fuel and other wood products. There is evidence to show that people's diets and shelter has deteriorated as a result of shortage of firewood and building poles respectively.

3.3 Water Contamination and Pollution:

This affects Lake Victoria and other lakes, rivers and wetlands, which provide water for domestic, livestock as well as industrial purposes. These water bodies are however uses as receptacles for untreated effluent and other waster particularly from industries and urban settlements.

The main polluting industries are located in the major towns of Kampala, Jinja, Mbale, Mbarara, Kasese and Lugazi. The key industries are breweries, soft drinks, textiles, sugar, leather tanning and mining.

In addition, in the rural areas, the rise in the use of agro-chemicals and the poor farming practices are responsible for the increasing release of these chemicals into the water bodies. Further more in the rural areas, the faecal matter deposited on open ground gets washed into water bodies leading to contamination.

Water being an essential element in the life cycle as well the production cycle means that a wide segment of the population as well as the ecosystem is negatively impacted. These impacts are

manifested by among others reduced fisheries production, poor human health and higher costs of production where good quality water is required.

3.4 Wetland Degradation

This is a growing problem due to rapid population growth and decline in productivity of upland soils. Wetlands vital for water storage and spawning of young fish are being drained for diary farming, crop cultivation and for industrial expansion, particularly in urban areas including Kampala City. The consequences of wetland degradation include loss of traditional grazing and watering grounds, shortage of water, loss of fish and other wetland products, increased incidents and scale of floods and water pollution resulting into higher costs of purification of water.

3.5 Bio-diversity Loss

Uganda is relatively well endowed with bio-diversity (the variety of life and living things.) Most of Uganda's bio-diversity is found in natural forests. But considerable amount is also found in open waters, wetlands, dry/moist savanna and agricultural systems. Uganda's bio-diversity ranges from the variety and variability of wild animals, plants, fish to insects (e.g. butterflies) and their habitats, to the domesticated plants and animals in the different farming systems. There however, has been degradation of bio-diversity as evidenced by extinction of the White Rhino in Uganda. In addition, the large herds of wild animals that used to roam Uganda are now restricted to protected areas, which have also shrank in size. Uganda's indigenous domestic animals and crops are also diminishing in number and distribution. The major causes of this bio-diversity loss are: habitat conversion, introduction of alien species, pollution of ecosystems, over harvesting and trade in live plants, animals and derived parts and climate change.

The implications of this bio-diversity loss are:

- loss in the tourism value and potential;
- loss of life support services;
- poor coping during hardy periods and
- loss of educational and research values.

3.6 Air and Noise Pollution

There is increasing indoor and outdoor air pollution by smoke from indoor combustion from use of firewood, charcoal and paraffin for cooking and lighting. Cigarette smoking is also a significant

contributor to indoor pollution. However, outdoor pollution by emissions from industries (particularly cement and coffee factories and stone quarries) and motor vehicle traffic is the major problem and cause of air pollution. This pollution is blamed for the increase in incidents and spread of respiratory diseases particularly in the urban centers.

Noise pollution is an increasing menace particularly in urban areas as a result of motor vehicles traffic, discos and places of worship.

3.7 Poor Solid and Municipal Waste Disposal/ Management

Generally due to lack of well-planned and developed solid waste disposal facilities or land fills there is indiscriminate disposal of solid waste including hospital waste, municipal garbage and household waste in rural areas. Of critical concern is clinical waste, polyethylene waste material (carrier bags-buveera), municipal garbage and scrap metal.

The prevalence of the above environmental problems is already having negative impacts on the people variously affected. This is therefore compromising sustainable development, as the natural resource capital, which underpins development, is deteriorating in quantity, quality, stability and productivity.

4.0 Strategies for Environmentally Sustainable Development

The measures that have been taken and/ or ongoing to stem environmental resources depletion and degradation, in order to assure the people of Uganda of Sustainable Development are not a subject of this discussion. However, an integrated approach has been adopted to tackle the environmental problems. It encompasses the following strategies among others:

i) Making specific provisions and requirement for rational and sustainable use of environment and natural resources in the Constitution.

ii) Completion of the National Environment Action Planning Process resulting to: National Environment Management Policy, 1994, National Environment Action Plan;

iii) Developing and enforcement of laws and regulations on environment management e.g. National Environment Statute, 1995 and its subsidiary laws;

iv) Institutional development at national and local level;

v) Integrated development and environment planning at national and local level;

vi) Training and public awareness on environment management;

vii) Support to community natural resources and environment management initiatives; and

viii) Cross-district, regional and international collaboration.

ADMINISTERING JUSTICE WITHOUT UNDUE REGARD TO TECHNICALITIES.

IN ENVIRONMENTAL MA TTERS

A Paper presented by Hon. Justice J.H.Ntabgoba

INTRODUCTION

Recently, I was opening a Makerere University Faculty of Law Workshop on Environmental Law at Hotel Africana, Kampala. The theme of my paper was" The role of the Judiciary in the development of environmental law." In my discussion I tried to underscore the necessity for the teaching of our judges and magistrates in environmental law. I thought in this present paper I should quote part of what I said at the Hotel Africana Workshop. This is what I said:-

"I must be honest, however, to avoid creating the impression that only the communities are not aware of the environmental law and that the courts possess the full capacity to grant the requisite orders in environmental disputes. It is to be appreciated that the subject" environmental law" is new in this country, as indeed it is in most, if not in all the third world countries in Africa. The subject was, until recently, not taught in our Universities, least in the Law Faculties. What this means is that our judges and magistrates have had to learn environmental law on the job as they go along with the adjudication of environment- related disputes.

Environmental law covers a very wide field, so wide that it becomes a very important and compelling, if not a critical, component of environmental enforcement mechanisms. The courts therefore should continue to be adequately sensitized about the general issues and constant trends in environmental law, to enable them to acquire the capacity to carry out their role and do it efficiently, effectively and expeditiously. It is then that the courts can grant and issue orders in environmental matters which the general public will understand, appreciate and comply with. I thus appeal to NEMA with the Judicial Training Committee and the Faculty of Law at Makerere University to step up educational programs not only for the public but also for judicial officers."

I do remember that in that same paper I appealed for the training of legal practitioners as well since they are an important component in the courts' adjudication of disputes. I must say therefore that I am exceedingly happy to have been called upon to participate in this workshop which is an answer to my prior request. I am happy to be able to share the topic I was asked to discuss today which is ' *'Administering justice without undue regard to technicalities* '.

The topic is an extract from Article 126[2] [e] of our constitution [1995].which provides that

"In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles;
[a]]
[b]
[c]
[d]
[e] *Substantive justice shall, subject to the law,* be *administered without undue regard to technicalities.* "

As far as I am concerned, it was rather superfluous to have included this provision in the Article of the Constitution because it provides what courts have always done even before the enactment of the Constitution. This is the corollary of the principle that unless one has first complied with the law or rules of law one can not benefit from the discretion of the court to obtain justice. This is an old principle which can be found in the ruling of Chief Justice of Uganda Sir Udo Udoma in the Case of Salume Namukasa vs Bukya [1966] EA p. 433. In that case, an application was wrongly brought before the High Court and the Advocate for the Applicant, realising his mistake in the application, implored the Chief Justice to use his discretion under the then Section 101 of the Civil Procedure Act and grant the application. The Chief Justice declined to exercise his discretion on the ground that the applicant who had not complied with the law could not get justice. Below are some of His Lordship's words in support of his decision :

" *It seems to me that before the provisions of that Section of the Act can be invoked the matter has been brought before the court, the proper way, in terms of the procedure prescribed by the Rules of this court. In the present case, the application has not been brought before this court in the manner prescribed by the law.* "

His Lordship then observed:

" It *was submitted by counsel that despite this defect, in that the application was not properly before the court, the court should invoke its inherent powers under Section 101 of the Civil Procedure Act and treat the application as properly before it for the purpose of meeting the ends of justice."*

The Chief Justice then concluded:

"*Counsel must understand that the rules of this court were not made in vain. They are intended to regulate the practice."*

The Chief Justice was saying to counsel:

"Of late a practice seems to have developed of counsel instituting proceedings in this court without paying due regard to the rule"' ,

In effect the Chief Justice was saying:-

'Look here. If you want court to have due regard to administering substantive justice in favour of your client, you must first comply with the law, which is the applicable Rules of *procedure".*

Therefore, whether or not the Constitution enjoins courts to administer substantive justice without undue regard to technicalities, the court would not grant the justice unless the law was complied with. This is what some lawyers do not seem to realise when they address the court citing Article 126[2] [e] of the Constitution. It is such out of context applications which courts have been dismissing. Below are some of the decisions that the Supreme Court has had to deal with after considering an application made pursuant to Article 126[2] [e] of the Constitution;

1. SEPHEN MABOSI Vrs UGANDA REVENUE AUTHORITY [Supreme Court Civil Application No. 16 of 1995.]

The Coram .in this case was three Justices;- Manyindo DCJ, Odoki JSC and Tsekooko JSC.. However, I have been able to lay my hands on the decisions of Odoki, JSC and Tsekooko JSC. who gave opposing rulings; and one needs to have the ruling of Manyindo DCJ. in order to know the out come of the application. The facts of the case were as follows:

It was an application to strike out a notice of appeal on the ground that the respondent had not instituted the Appeal within 60 days of the filing of the notice of appeal as required by Rule 81 [1] of the Supreme Court Rules. The sub-Rule provides that an appeal should be instituted by lodging a memorandum of appeal and a record of appeal within' 60 days of the date when the notice of appeal was lodged. The proviso to the sub-Rule states;

"*Provided that where an application for a copy of the proceedings in the High Court has been made within 30 days of the date of the decision against which it* is *desired to appeal, there shall, in computing the time within which the appeal* is *instituted, be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery to the appellant of such copy.*

[2] an appellant shall not be entitled to rely on the proviso to sub-Rule [1] unless his application for such copy was sent in writing and a copy of it was sent to the respondent' ,

Counsel *for* the appellant did only send a notice of appeal in which he stated

"*The intended appellant intends to formulate its grounds of appeal on receipt of the record of proceedings and the ruling of the court.* "

He did not send a written request *for* the copy of the proceedings but in other two letters, he stated to the High Court Registrar that:-

" *Further to our notice of appeal which was lodged with the Honourable court, this* is *to request that work on the preparations of the record of proceedings in the above case be speeded up in order to enable* us *to file a memorandum of appeal.* "

This letter was dated 20th March 1995, apparently beyond the time stipulated for applying for the record of proceedings and for sending a copy of the request to the respondent.. On 22nd June 195, the Registrar issued his certificate which read:

I P.K.K. Onega, Registrar of the High Court hereby certify that the copies of the proceedings, exhibits and judgment which were applied for by counsel for the defendant on February 1995 *were sent on 22nd June* 1995. "

Learned counsel for the respondent did, on receipt of the record of the proceedings, promptly lodge the appeal on 30th June 1995. The question at issue was whether the notice of appeal's second paragraph which stated, on receipt of the record of proceedings and the ruling of the court that
, *'appellant intends to formulate its grounds of appeal"* amounted to a request for a record of proceedings since it was addressed to the Registrar who had custody of the proceedings. Counsel for the applicant submitted that it was not a request for the record of proceedings under Rule 81 [1] of the Rules of the Supreme Court. Odoki, JSC, held that the notice of appeal which indicated that on receipt of the record of proceedings also amounted to the record of proceedings. He justified his so holding in the following words:

"/ *agree with counsel for the applicant that an application normally refers to a request. However, Rule* 81 *does not provide the form the application or request should take. The essentials of the application appear to be that:-*

[a] it should be in writing.
[b] it should be addressed to the Registrar.
[c] it should be made within 30 days from the date of judgment.
[d] it should request for a copy of the proceedings.
[e] a copy of it should be sent to the respondent."

Despite the fact that the learned justice acknowledged the provision that a copy of the request for the record of proceedings should be sent to the respondent [applicant], and, despite the wording of sub-Rule [2] of Rule 81 of the Rules of the Supreme Court, he nevertheless upheld the argument of counsel for the respondent [appellant] . It is difficult to see why the learned justice could not realise that the letter to the Registrar requesting for speeding up the record of proceedings was written and sent to the Registrar beyond the period of time stipulated for applying for the record of proceedings and no copy of it had, in any case, not been sent to the respondent .to. comply with Rule 81 [2]. This was not a technicality as the learned justice apparently held Rather, it was a fundamental breach of Article 126[2] [e] of the constitution which demands that it can be taken advantage of" subject to the law.". There are some other cases which I am about to relate in which the principle of" administering

justice without undue regard to technicalities was followed and applications rejected because there was no compliance with the law as a condition precedent to those applications.

2. KASIRYE, BYARUHANGA & Co Vrs. UGANDA DEVELOPMENT BANK [Civil Appeal No 2 of 1997].

An appeal from the orders of a Deputy Registrar on a Bill of Costs, pursuant to Section 61 of the Advocates Act, 1970, was lodged with the Principal Judge who dismissed the appeal with costs,upholding the decision of the Deputy Registrar. Although on 19th July 1995, the Principal Judge dismissed the application for leave to appeal, the appellants filed a notice of appeal in the High Court intending to appeal to the Court of Appeal. When on 22nd May, 1997, the appeal was called for hearing, counsel for the respondent challenged the competence of the appeal by way of a preliminary objection on two points:-
[1] Counsel submitted that since the Principal Judge gave his judgment on 19th July, 1995, the appeal should have been filed within 60 days thereafter which would have been on or about 20th September 1995. In effect counsel submitted that the appellant could not rely on the proviso to Rule 81 [1] of the Rules of he Supreme Court because a letter to have requested for proceedings before the Principal Judge was not served on he respondent. Counsel said that he had sought clarification from counsel for the respondent on this point in vain. Counsel for the appellant erroneously contended that the preliminary objection was misconceived and that it intended to defeat the cause of justice. He later on conceded that he had not copied the request for court proceedings to the respondent. He, however, invoked the provisions of Article 126[2] [e] of the Constitution .arguing that since there was an application for proceedings the failure to serve a copy thereof to the respondent occasioned no miscarriage of justice. Disagreeing with the learned counsel's argument, the Court cited Article 126[2] [e] of the Constitution and underlined the phrase' *'subject to the law"* They reiterated their words in Utex Industries Ltd Vrs Attorney General [Supra] that:

"We are not persuaded that the constituent Assembly Delegates intended to wipe out the rules of procedure of our courts by enacting Article 126[2] [e]*"*

They upheld the preliminary objection quoting Rule 81[1] which, as has already been cited and provides:

" *Subject to the provisions of rule 112, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged."*

3. UTEX INDUSTRIES LTD Vrs ATTORNEY GENERAL [SC Application No 52 of 1995.]

In this case the applicant brought an application in the Supreme Court by notice of motion under Rules 42[1] and [2], 76, 80 and 81 of that Court's Rules of procedure, seeking an order that the notice of appeal filed by the Attorney General, the respondent, on August 1, 1995, be struck out because the respondent failed to take certain essential steps within the time prescribed in the rules. The application was supported by two affidavits and also the response was supported by two

affidavits. The background to the application was that prior to the institution of High Court Civil suit No.4 Of 1993, the Managing Director of the applicant company was involved in business deals with a certain Asian. There was a misunderstanding at one stage. The Police was called upon to investigate the dispute. As a result, the Police handed over the shop goods to the Asian. The applicant filed a suit in the High Court against the respondent [Attorney General], seeking damages because of the Police action. An attempt by the respondent to join the Asian in the suit as a co-defendant was rejected by the High Court. Consequently, the High Court passed judgment in favour of the applicant against the respondent. The judgment was delivered on 4 August 1995. The affidavit on appeal showed that on 18 August 1995 the respondent filed a notice of appeal in the High Court and on 5 September 1995 it wrote a letter to the Deputy Registrar of the High Court requiring for the record of proceedings to be typed The letter was not copied to the applicant as required by Rule 81 [2]of the Supreme Court Rules which provides:

'An appellant shall not be entitled to rely on the proviso to sub-rule [1 *J unless his application for such copy was in writing and a copy of it was sent to the respondent"*

After applying on 5th September for the record of proceedings a copy whereof he did not send to the applicant, the respondent did not file a memorandum of appeal until 3 December 1996. Even then, the memorandum was filed in the Court of Appeal but not in the High Court. There was no evidence as to when the respondent received or collected the record of proceedings in the High Court although from the affidavit in support of the respondent's appeal, it was clear that the record of proceedings was in the respondent's office on 20 April 1996 which was a Saturday. This showed that clearly the respondent was very late filing the memorandum of appeal. For such late filing the respondent gave excuse saying that he could not raise a sum of Shs. 167,000/= in time to prepare the record of appeal. The applicant submitted that the notice of appeal should be struck out because:

[a] the respondent did not institute the appeal within 60 days as prescribed by Rule 81[1];;
[b] the notice of appeal was served on the applicant out of time which was on 5 September 1996.

The court found that the possibility was that the notice of appeal was served on the applicant on 18 August 1996, which was within the prescribed period. However, the court also found that the respondent could not rely on the proviso to Rule 81 [1] of the Rules since he could not prove when he had receive the record of proceedings or when he had applied for it, and also since he failed to give a copy of it to the respondent.

To the Attorney General' reliance on Article 126[2] [e] of the Constitution, the court said :-

" *Mr. Cheborion relied on Article 126[2] [e] of the Constitution of 1995 and the ruling of Odoki JSC in Stephen Mabosi Vs Uganda Revenue Authority* [*supra J for his view that we should not strike out the notice of motion on the basis of technicalities. He argued that the Attorney General's inability to raise the fees of Shs, 167,000/= for filing the appeal is excusable by virtue of rule* 4 *of the Rules of the Court. Other than citing rule* 4, *the learned Principal State Attorney was unable to*

cite any authority to support the last part of his arguments.
With respect, we think that rule 4 *is wholly inapplicable to the facts of this application. We can't see how rule* 4 *can save the respondent's predicament since the respondent has not applied for leave to extend time.* "

Most significantly for our topic for discussion were the words of the Court on the last page of the ruling that;

" *Regarding Article* 126[2] *Fe] and the Mabosi case, we are not persuaded that the Constituent Assembly Delegates intended to wipe out the rules of procedure of our courts by enacting Article* 126[2] *Fe]. Paragraph Fe] contains a caution against undue regard to technicalities. We think that Article appears to be a reflection of the saying that rules of procedure are hand maidens of justice meaning that they should be applied with due regard to the circumstances of each case. We cannot see how in this case Article* 126[2] *Fe] or Mabosi case can assist the respondent who sat on his rights since* 18/8/1995 *without applying for leave to appeal out of time. It is perhaps pertinent here to quote paragraph [b] of Article* 126. *It states:*

" *Justice shall not be delayed.* "

Thus to avoid delays, rules of court provide a timetable within which certain steps ought to be taken. For any delay to be excused, it must be explained satisfactorily.'

Application of the expression *"administering justice without undue regard to technicalities*" in environmental matters is very challenging for the courts because, environment is something that greatly affects the human life of every one but also affects everything on our planet. That means that if anything before the court is environmental-related, it is capable of arousing emotions in the judge or magistrate. As we all know, however, emotions are prone to breed bias and therefore the court, in its administration of an environmental case, must avoid bias. It must regard environment as a human right which must be handled seriously; and this enhances the court's great care not to ignore the Constitutional provision that "subject to the law", justice shall be administered without undue regard to technicalities" In effect I am saying that environment, being a human right, courts must handle environmental matters in the same way they should handle human rights matters. S.T.Manyindo DCJ. as he then was, underscored the necessity of administering substantive justice without undue regard to technicalities in fundamental human rights matters in the case of Attorney General V s Maj. Gen. David Tinyefuza [CA 1 of 1997] as follows:

" *The case before us relates to the fundamental rights of the individual like the petitioner which are enshrined in and protected by the Constitution. In my opinion it would be highly improper to deny him a hearing on technical or procedural grounds. I would even go further and say that even where the respondent objects to the petition as in this case, the matter should proceed to trial on merit unless it does not disclose a cause of action. This court should readily apply the provisions of Article 126[2] [e] of the Constitution in a case like this one and administer justice without undue regard to technicalities.* "

In the course of your sittings, you will meet many objections in environmental cases, which will tend to use rules of procedure to frustrate cases, which have substance. It will be necessary for the courts, bearing in mind the importance of protecting the environment as a human right to come out and reject such preliminary objections. In this regard, I would refer to the unanimous decision of the Supreme Court in the Election Petition No.1 of 2001 [Dr. Kiiza Besigye V s Yoweri Kaguta Museveni] in which the court decided that Order 7 rule 3 of the Civil Procedure Rules was a procedural technicality. The Rule Provides that :-

" *Affidavits shall be confined to such facts as the deponent is able on his own knowledge to prove, except in interlocutory applications, on which statements of his belief may be admitted provided that the grounds thereof are stated.* "

Chief Justice Odoki specifically referred to Article 126[2] [e] of the Constitution that

" *From the authorities I have cited there IS a general trend towards taking a liberal approach in dealing with defective affidavits. This is in line with the Constitutional directive in Article126[2][e]of the Constitution that courts should administer substantive justice without undue regard to technicalities. Rules of procedure should be used as hand maidens of justice but not defeat it. "*

I must point out however that I cannot reconcile my opinion with the holding of the Supreme Court in the Kiiza Besigye Vrs Museven petition case that Order 7 Rule 3 of the Civil Procedure Rules is a technicality. The rule is couched in mandatory terms and my understanding of the legal interpretation is that mandatory provisions must be strictly obeyed. I cannot understand why their Lordships declared a mandatory rule a technicality and in the same ruling decided, like Chief Justice Sir Udo Udoma did, that the rules of court must be obeyed because they were not made in vain. My humble opinion is that if Rule 3 of Order 7 of the Civil Procedure Rules is a mere technicality as their Lordships declared, it should have no place in the Rules and they should have ordered its expunging from the Rules. My considered opinion is that mandatory rules of procedure cannot be said to be a technicality. Ordinary rules may be, depending on the circumstances of each case.

As I have done before, my advice to you is that when you are confronted with either a preliminary objection or an application to use inherent powers or discretion, which are one and the same thing, you should first divorce from your minds any bias or emotion in order to be able to administer justice without undue regard to technicalities *but subject to the law.* This should be the case in environment-related matters as well as in any other matters.. Remember, before you can entertain any preliminary objection or any other interlocutory application, the objector or applicant must have first complied with the law. That is the import of the condition of Article 126[2] [e] of the Constitution that' *'subject to the law'*

OVERVEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING ENVIRONMENTAL MANAGEMENT IN UGANDA

BY CHRISTINE ECHOOKIT AKELLO
SENIOR LEGAL COUNSEL, NEMA

1.0 INTRODUCTION

This paper discusses the policy, regulatory and institutional framework for environmental management in Uganda.

1.1 ENVIRONMENTAL POLICY

- **The National Environmental Action Plan (NEAP)**

Until the Uganda National Environment Action Plan (NEAP) process, various environmental concerns existed almost independently from an institutional point of view, that is, as being regulated under the existing sectors of government. The protection of the environment needed a comprehensive approach that accommodates changing perspectives, standards and concerns, depending on scientific development. This introduced the concept of framework legislations flexible to change.

In 1990 the Government established the NEAP, a continuos in-country process based on local/popular participation aimed at providing a broad framework for integrating environmental considerations into the nation's socio-economic development strategy; The NEAP process favoured a prospective and inter-sectoral approach, noting the need to prevent pollution and also to have a co-ordinating mechanism to deal with environmental issues.

The NEAP process identifies major environmental issues and priorities through the process of review, analysis and consultation by using the following criteria:-

(a) the urgency of the problem;
(b) the potential of irreversibility of the environmental losses if no action is taken;
(c) the expected benefits from addressing the issues considered; and
(d) the degree of inter-relationship among issues.

Thus, the National Environmental Action Plan (NEAP) process provided strategies for addressing environmental concerns in the areas of policy, legislation, institutional reforms and new investments with the view of promoting sustainable development which maintains and enhances environmental quality and resource productivity to meet the needs of present and future generations.

To achieve this re-orientation, three key initial strategies were required. These included: (i) the revision and modernization of sectoral policies, legislation and regulations; (ii) the creation and establishment of an appropriate institutional and legal framework; and (iii) the establishment of

an effective monitoring and evaluation system to assess the impact of policies and actions on the environment, the population and the economy.

- **The National Environment Management Policy 1994**

The Action Plan was closely followed by the adoption of the National Environment Management Policy (NEMP) for Uganda in 1994 which sets out the overall policy goals, objectives and principles for environmental management. Under the National Environment Policy the overall policy goal is;

> "Sustainable social and economic development which maintains or enhances environmental quality and resource productivity on a long term basis that meets the needs of the present generations without compromising the ability of future generations to meet their own needs."

Specific Policy Objectives

Specifically, the policy seeks to meet the following objectives:

- ❖ Enhance health and quality of life of all Ugandans and promote long-term, sustainable economic development through sound environmental and natural resource management and use;
- ❖ Integrate environmental concerns in all development oriented policies, planning and activities at national, district and local levels, with participation of the people;
- ❖ Conserve, preserve and restore ecosystems and maintain ecological processes and life support systems, including conservation of national biological diversity;
- ❖ Optimise resource use and achieve a sustainable level of resource consumption;
- ❖ Raise public awareness to understand and appreciate linkages between environment and development; and
- ❖ Ensure individual and community participation in environmental improvement activities.

- **Key Environmental Principles**

Underlying these broad policy objectives are certain key principles which are intended to guide current and future policy development and implementation strategies:

(i) Every person has a constitutional right to live in a healthy environment and the obligation to keep the environment clean;

(ii) The development of Uganda's economy should be based on sustainable natural resources use and sound management;

(iii) Security of land and resource tenure is a fundamental requirement of sustainable

natural resource management;

(iv) Long-term food security depends on sustainable natural resource and environmental management;

(v) The utilization of non-renewable resources should be optimized and where possible their life extended by recycling;

(vi) Environmentally friendly, socially acceptable and affordable technologies should be developed and disseminated for efficient use of natural resources;

(vii) Full environmental and social costs or benefits foregone as a result of environmental damage or degradation should be incorporated in public and private sector planning and minimised where possible;

(viii) Social and economic incentives and disincentives should complement regulatory measures to influence people's willingness to invest in sustainable environmental management;

(ix) Priority should be given to establishing a social and economic environment which provides appropriate incentives for sustainable natural resource use and environmental management;

(x) An integrated and multi-sectoral systems approach to resource planning and environmental management should be put in place;

(xi) Regular monitoring and accurate assessment of the environment should be carried out and the information widely publicised;

(xii) Conditions and opportunities for communities and individual resource managers to sustainably manage their own natural resources and the environment should be created and facilitated;

(xiii) Effective involvement of women and youth in natural resource policy formulation, planning, decision-making, management and programme implementation management is essential and should be encouraged;

(xiv) Increased awareness and understanding of environmental and natural resource issues by Government and the public should be promoted;

(xv) Social equity, particularly when allocating or alienating resource use and property rights, should be promoted; and

(xvi) Sub-regional, regional and global environmental interdependence should be recognised.

- **Cross-sectoral Policy Objectives, Principles and Strategies**

These cover the following aspects:

- ❖ Strengthening land and resources tenure rights thereby improving land stewardship by rural and urban users.;

- ❖ Sustainable land use policy and planning;

- ❖ Environmental information generation and sharing to ensure dissemination of reliable information relating to environmental management issues such as biodiversity, soil conservation, fuelwood supply and demand, and pollution control;

- ❖ Conservation of biological diversity in relation to the pricing policy which should ensure that prices paid by resource users reflect the cost of resource replacement or rehabilitation;

- ❖ Water resources conservation and management to ensure provision of water of acceptable quality for all social and economic needs;

- ❖ Wetland conservation and management to ensure that they continue to provide socio-economic and ecological values and functions;

- ❖ Environmental economics and macro-economic policy planning to integrate into environmental planning, economic principles such as;

    - ✓ environmental accounting.
    - ✓ pricing mechanisms e.g leases, management contracts, user fees, concession agreements, etc.
    - ✓ financial and economic sustainability.
    - ✓ use of economic incentives and disincentives e.g. taxes, user fees, to change people's behaviour.

Policy makers and resource users are also required to understand the following principles:

- ❖ Environmental impact assessment and monitoring to ensure that adverse environmental impacts can be foreseen, eliminated or mitigated.

- ❖ Control of pollution and management of domestic and industrial waste and hazardous materials.

- ❖ Monitoring of the climate and atmosphere of the country in order to better guide land-use and economic development decisions, and better manage air pollution and greenhouse gas emissions.

- ❖ Management of population growth, health and human settlements in order to match people and resources in an economically productive, socially acceptable and environmentally sound manner.

- ❖ Gender integration at all levels of environmental and natural resource management.

- ❖ Environmental education, human resource development and research to ensure sustainable development and environmental protection.

- ❖ The significance of public awareness in environmental management.

Sectoral Policies

The National Environment Policy also allowed for the formulation of sectoral or lower levels of government policies concerning environment and natural resources management. Some of the policies that have been formulated in conformity with the National Environment Management Policy include: the Water Policy 1995, the National Wetlands Management Policy 1996, the Wildlife Policy 1996, the draft National Soils Policy, Fisheries Policy 2000, Forestry Policy 2001 and several District Environment Management Policies from 2000 onwards.

2.0 INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT IN UGANDA

Before 1986, Uganda had no institution specifically responsible for environmental management. The environment was 'managed' at the sectoral level. In 1986, the Government created the Ministry of Environment Protection, charged with the responsibility of coordinating and enhancing natural resource management, harmonizing the interests of resource users, monitoring pollution levels, and advising the Government on policy and legislative reforms for ensuring sound environmental management. The Ministry was later absorbed into a Ministry of Water, Energy, Minerals and Environment Protection which in 1993 became the Ministry of Natural Resources. The responsibility for environmental management then shifted to the Department of Environment Protection (DEP), some sort of a downgrade from commanding a whole ministry. Consequently, the institutional framework did not give environmental management the authority and profile it deserved. Even when combined with the role of other sectoral institutions and civil society organizations the creation of DEP did not solve the ad hoc nature of environmental monitoring, coordination, supervision and management.

These institutional weaknesses were identified during the NEAP process. Subsequently, the National Environment Management Policy advocated for a new institutional structure, the National Environment Management Authority (NEMA), the structure was provided for in the National Environment Act. NEMA is the principal agency in Uganda for the management of the environment with the express mandate to coordinate, monitor and supervise all activities in the field of the environment. NEMA is one of the highly placed institutions in the country which is expected to influence other institutions and the general public. Its concerns about the environment are voiced at high levels of decision-making and policy formulation and it has the necessary political approval.

An Inter-Ministerial Policy Committee (IPC), composed of 11 cabinet ministers, is the supreme organ of NEMA. It is chaired by the Prime Minister. The IPC provides policy guidelines, formulates and coordinates environmental issues in the country for NEMA, and liaises with the cabinet on issues affecting the environment generally. Furthermore, the IPC identifies and removes obstacles to implementation of environmental policies and programmes.

Another important institutional organ of NEMA is its board of trustees, which oversees the implementation and successful operation of policy and the function of NEMA. The Executive Director and Board Chairman are ex-officio members of the IPC.

The National Environment Act (NEA) establishes the Board, which is appointed by the Minister responsible for Environment with approval of the policy committee. The members of the board are appointed by virtue of their knowledge and experience in environment management. The principal role of the board is to oversee the operation, policy and to review the performance of the secretariat as well as to establish procedures for the management of staff.

The Board is given the mandate to appoint technical committees including those on:

a) Soil Conservation;
b) Licensing of Pollution;
c) Bio-diversity Conservation;
d) Environmental Impact Assessment.

The NEMA Secretariat

- This include the following:
- The Office of the Executive Director
- Policy, Planning & Information Department
- Environmental Monitoring & Compliance Department.
- District Support Co-ordination & Public Education Department.
- Finance & Administration Department.

Since NEMA is not an implementing institution, it must perform its duties through cooperation with other institutions. NEMA is horizontally linked to the lead agencies in the environment sector. NEMA is also vertically linked to the local government structure, the private sector, and civil society.

Under the various sectoral policies and legislation there are lead agencies, which are coordinated by NEMA for purposes of addressing environmental issues. The Lead Agencies have the responsibility to develop internal capacity and contribute to sustainable environmental management, collect data and disseminate information, and promote environmental education and public awareness in their respective sectors. They also ensure enforcement, implementation, compliance, and monitoring of laws, policies and activities within their jurisdictions. The lead agencies are also expected to supervise, within their legal and administrative setup, the conduct of environmental assessments, set environmental standards and carry out inspections related to the environment.

NEMA links vertically with local governments. The Local Governments Act 1997, derived from the decentralization policy provides for the devolution of governance from the centre to the districts and lower levels. The District Council (DC) is the highest level of governance at sub-national level. One of its roles is to ensure the integration of environmental issues in the development planning process. The DC has direct linkage with the District Support Coordination Section in NEMA, which provides guidelines for the establishment of district environment committees in consultation with the district councils. Environment Committees

are established at sub-county, parish and village levels, although the lowest level of government is the sub-county.

District environment committees are expected to ensure that environmental concerns are integrated in the district plans and projects, formulate bye-laws, promote dissemination of environmental information, and prepare the district state of the environment reports annually.

The NEA also creates the office of the District Environment Officer who acts as a liaison officer between NEMA and the District. This kind of institutional framework ensures that environmental resources are controlled and managed by communities for their own benefit on a sustainable basis.

3.0 THE LEGAL FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT

3.1 THE CONSTITUTION OF UGANDA 1995

The Constitution is the supreme law and it provides for environmental protection and conservation. The 1995 Constitution provides in the National Objectives and Directive Principles of State Policy, that the state shall promote sustainable development and public awareness of the need to manage land, air, and water resources in a balanced and sustainable manner for the present and future generations.

It further provides that the natural resources of Uganda are to be managed in such a way as to meet the development and environment needs of present and future generations of Ugandans. In particular, the state is required to take all possible measures to prevent or minimize damage and destruction to land, air, and water resources due to pollution or other causes.

The provisions of the Constitution protect property rights and other individual rights. Furthermore, the state is to promote and implement energy policies that will ensure that the people's basic needs and those of the environment are met. Above all, Article 39 of the Constitution entitles every Ugandan to a clean and healthy environment.

It is significant that this Article falls in Chapter 4 of the Constitution, on Protection and Promotion of Fundamental and other Human Rights and Freedoms. The fact that the right is all - encompassing, covering every Ugandan, and the fact that it is not limited in any way, favours a fundamental rights interpretation of the right. This means, therefore, that it is not only an individual right but possesses the qualities of a collective right. Article 20 (1) provides that ‘fundamental rights and freedoms of the individual are inherent and not granted by the state’. As a fundamental right, it is inalienable and belongs to an individual by virtue of his /her being human.

- **Rights and Capacities**

Paragraph (2) of section 3 of the National Environment Act provides that:- Every person has a duty to maintain and enhance the environment, including the duty to inform NEMA or the local environment committees of all activities and phenomena that may affect the environment significantly.

For every right's holder, there is a duty 'to maintain and enhance the environment'. By enforcing their right the individual is actually performing their obligation to protect the environment. This was the interpretation given by the Supreme Court of India in the Oposa case[1] as regards the right and duties of present generation in relation to future generations. This interpretation is more explicit as between individuals and groups living in the present generation.

Under Article 17 of the 1995 Constitution, every citizen has the duty to create and protect a clean and healthy environment.[2] The duty is participatory in nature - not to perform any act which may endanger the environment and also the duty to report to the relevant authorities.

The reference to 'every Ugandan' and 'every person' in the National Environment Act and the Constitution respectively, does not create conflict of rights' holders but are used complementarily. That is why the National Environment Act provisions on the environment should be read together with Article 50 of the Constitution.

The scope of Article 50 of the Constitution is wider than that of section 3(3) and (4) of the National Environment Act. Article 50 (1) provides than any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened, is entitled to apply to a competent court for redress, which may include compensation. This Article empowers any person to enforce the right to a decent environment. In addition to individuals, groups and third party organisations who may have an interest in the matter as members of the public, have *locus standi* to institute a suit. The only requirement is that the right as guaranteed in the Constitution has been infringed or threatened. This argument is in line with clause (2) of the same Article which provides that any person or organisation may bring an action against the violation of another person's or group's human rights.

The rights and duties to the environment should thus hinge upon the capacity of any person, notwithstanding the general rules relating to *locus standi*, to bring an action to stop potential or actual environmental damage.[3] Since environmental wrongs are most of the time general

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1 Oposa et. al.. v Secretary of the Environment & Water Resources T.G.R. No. 101083, July 30, 1993.

2 Clause (1) (j).

3 The traditional view of *locus standi* is that no one can bring an action in the courts of law unless that person's right has been infringed. In the common law of negligence, for instance, it must be shown that the defendant owed a certain duty to the plaintiff and was in breach of that duty (Donoghue v Stevenson [1932] A.C. 563). In statutory law generally, it must be shown that the plaintiff has a cause of action against the defendant.(Auto Grage v Motokov [1971] E.A. 514 ; Ali Mustafa v Sango Bus Co. [1975] H.C.B. 93). Thus, if the plaintiff has not suffered a wrong at the hands of the defendant he or she can not sue. In other words, an individual has no *locus standi* in a common law court unless he or she can prove that he or she has sustained injury to his/ her rights as a person or against his / her property. There is, however, a trend to liberalise

wrongs (wrongs sui generis) where it is difficult to prove personal injury to a personal right (*in personam*), it follows that the capacity of the public to enforce good environmental husbandry is limited.

That is why the liberal rules on *locus standi* have been applied to environmental issues. The complainant need not show that the defendant's act or omission has caused any personal loss or injury (Ss.3(4) and 71 of the National Environment Act.)

The issue of concern about broadening the ability to bring an action (locus standi) is that it increases the number of possible litigants. This situation, however, has not arisen possibly due to the legal costs which may be involved.

- **The Doctrine of Public Trust**

Under Article 237 of the Constitution, the state, including local governments, is required to create and develop parks, reserves and recreation areas and ensure conservation of natural resources and to promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda. The Doctrine of Public Trust is enshrined in the Constitution under Art. 237(2)(b). In accordance with this principle, the management of environmentally fragile resources such as natural lakes, rivers, wetlands, national parks, game reserves and forest reserves is vested in the state.

The Constitution also imposes a duty on the state to protect important natural resources; including land, water, minerals, oil, fauna and flora on behalf of the people of Uganda. Parliament has ably done this through the enactment of the National Environment Act, the Water Act, the Land Act, the Wildlife Act and the Local Government Act.

3.2 THE NATIONAL ENVIRONMENT ACT, CAP 153

This Act establishes the National Environment Management Authority (NEMA) as the overall body, charged with the management of environmental issues. In brief, the Authority in consultation with the lead agencies is empowered to issue guidelines and prescribe measures and standards for the management and conservation of natural resources and the environment.

The Act provides for the following principles of environmental management:

a) to use and conserve the environment and natural resources of Uganda for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of the available resources;

b) respect the principle of optimum sustainable yield in the use of natural resources;

c) to reclaim lost ecosystem where possible and reverse the degradation of natural resources;

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rules of standing throughout the world in-spite of the traditional view of *locus standi*. Uganda has also started taking a stand on this matter.

d) to establish adequate environmental protection standards and to monitor changes in environmental quality;

e) to publish relevant data on environmental quality and resource use;

f) ensure that polluter pays;

g) ensure that environmental awareness is treated as an integral part of all educational levels; and

h) to promote international co-operation between Uganda and other states in the field of environment.

3.2.1 Management Measures under the Act

The Act empowers the Authority in collaboration with Lead agencies to issue guidelines and measures relating to:

(a) management of lakes and rivers;
(b) management of lakeshores and riverbanks;
(c) management of wetlands;
(d) management of hilltops, hill-sides and mountainous areas;
(e) conservation of biological resources;
(f) management of forests;
(g) planting of wood lots;
(h) protection of the ozone layer;
(i) waste management;
(j) management of toxic and hazardous chemicals;
(k) management of range lands;
(l) land use planning; and
(m) protection of natural heritage sites.

There are two major principles followed by the Authority when applying the various management tools that are contained in the Act. These principles are:

a) The Precautionary/Preventive Principle;
b) The Polluter Pays Principle.

- **The Precautionary Principle**

The Precautionary/Preventive Principle is implemented through the following tools:

Environmental Planning

Environmental planning as defined in section 1 of the National Environment Act means both long-terms and short-term planning that takes into account environmental issues. NEMA is enjoined to prepare a National Environment Action Plan to be reviewed after every five years

or less.[4] The plan shall cover all matters affecting the environment in Uganda and shall contain guidelines for the management and protection of the environment and natural resources as well as the strategies for preventing, controlling or mitigating any deleterious effects.[5] It shall also take into account district plans established under section 18 of the Act. Environmental planning ensures that development activities are harmonized with the need to protect the right to environment. It also ensures that environmentally – unfriendly activities will not be permitted and that those permitted shall be strictly controlled in accordance with established standards.

Environmental Monitoring and Impact Assessment

Environmental Monitoring is defined in section 1 of the Environment Act as the continuous determination of actual and potential effects of any activity or phenomenon on the environment whether short-term or long-term.

Under the Environmental Impact Assessment Guidelines two systems of monitoring are specified as:-

a) Self monitoring whereby the developers themselves are encouraged to monitor the impact of their activities and;
b) Enforcement monitoring done by government agencies such as NEMA through environmental inspectors.[6]

Environmental Audit

Environmental audit is defined in section 1 of the Environment Act as 'the systemic, documented periodic and objective evaluation of how well environmental organisation, management, and equipment are performing in conserving the environment and its resources.' Audits occur after the project has commenced and may lead to prosecution of offenders. Audits may also lead to the redesign of a project or the remodeling of its operations in order to avert possible disaster or other environmental damage that may go beyond regulatory compliance.

NEMA carries out continuous audits[7] with the help of inspectors, to ensure that industries comply with the requirements of the Environment Act. The problem, however, is that many industries were set up before the Act was enacted and environmental standards were not a key feature then. The result is that industry has had to adapt to the new policy under the Act and has to be willing to shoulder the cost of clean-up operations and also to adopt appropriate technology.

Environment Standard Setting and Licensing

[4] Section 17(1) of the National Environment Act.

[5] id., section 18 (2)(a).

[6] section 23 (2) of the National Environment Act.

[7] Section 22 of the National Environment Act.

Licensing and standard setting is one of the most widely used tools of enforcement of environmental law. The environment Act provides for establishment of environment standards in part VI of the Act.

There are activities which require specific permits. These include the import, manufacture, and disposal of hazardous chemicals, wastes and substances. In order to control the environmental effects of these substances the law requires their classification and labeling.

In order to confront polluters, standards and regulations are being put in place, include the following:

- The Environmental Impact Assessment Regulations No. 13 of 1998;
- The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations No. 5 of 1999;
- The National Environment (Waste Management) Regulations No. 52 of 1999;
- The National Environment (Hilly and Mountainous Areas Management) Regulations No. 2 of 2000.;
- The National Environment (Wetlands, RiverBanks and LakeShore Management) Regulations No. 3 of 2000.;
- The National Environment (Minimum Standards for Management of Soil Quality) Regulations No. 59 of 2001;
- The National Environment (Management of Ozone Depleting Substances and Products) Regulations No. 63 of 2001;
- The National Environment (Control of Smoking in Public Places) Regulations No. 12 of 2004;
- The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, No. 30 of 2005.

Standards setting ensures that licences and permits are issued as a measure for the control of activities that may have deleterious or beneficial effects on the environment. Use of licenses and permits is prospective in that they emphasize the control of activities before they commence.

This requires that the licensing authorities should be environmentally conscious to avoid emphasizing the revenue collection aspect at the expense of environmental concerns.

Public Awareness and Participation

The need for popular awareness is a key requirement for enforcement of legislation. NEMA is given the mandate to carry out education and awareness campaigns to ensure that the public participates in environmental decision making and enforcement.

Environmental Easements

Under the Act, a person may apply to court for an easement to protect the environment. In view of the constitutional provision relating to rights to a clean and healthy environment and the capacity of any person to enforce that right notwithstanding that their specific rights have not been affected, this easement differs from the common law easement. It may be enforced

by any body who finds it necessary to protect a segment of the environment although he may not own property in the proximity to the property subject to the easement.

The Use of Economic and Social Incentives

The Act clearly provides that management measures should be carried out in conjunction with the application of social and economic incentives including taxation measures.

- **The Polluter Pays Principle**

Meeting the cost of conservation implies using various methods of raising finances and in particular, ensuring that polluters bear the cost of polluting the environment.

There are a number of existing methods under the National Environment Act and the regulations made under it. These include:

Performance Bonds

It is known that there are some industrial plants, which produce highly dangerous or toxic substances and therefore have significant adverse impacts on the environment. It is also known that some facilities may not be prepared to operate and comply with the environmental laws and requirements. Such plants may be required to deposit bonds as security for good environmental practice. Such deposits are refundable after such a duration when the operator has observed good environmental practice to the satisfaction of NEMA, failure to observe good environmental practice leads to confiscation of the bond

Environment Restoration Orders

Where the person's activities affect the environment, the Authority or a court may issue a restoration order requiring the person to cease the activities or to restore the environment as soon as possible to its original state. The order may be given pursuant to an action brought by an individual or upon the initiative of the Authority.

Record Keeping and Inspections

Persons whose activities are likely to have a significant impact on the environment are required to keep records of the amount of wastes and by products generated by their activities and as to how far they are complying with the provision of the Act. These records are required to be transmitted annually to the Authority.

Inspections are carried out by gazetted inspectors who have very wide powers under the Act. They are empowered to take samples, seize any plant equipment or substance and close any facility. They can also issue Improvement Notices, which are legal notices notifying a person of an infraction and giving a time frame in which to make corrective measures or face further enforcement action

The Use of Criminal Law

Criminal law remains a veritable instrument for the control of behaviour because of the natural tendency of people to fear the infection of pain, isolation or economic loss. Therefore, the Act provides for serious penalties for infraction of its provisions. These include fines, imprisonment and forfeiture of property to the state. It is, however, recognised that criminal law cannot be the mainstay for the enforcement of law but is a necessary supplementary measure to the approaches outlined above.

Community Service Orders

As an alternative to imprisonment and fines, persons committing environmental wrongs may be required to perform duties in the community as a reparation to the community for the wrong done. As far as the duty to maintain and enhance the environment is concerned, such a person could be required to remedy the environmental wrong he or she has committed. If they are not able to do so financially or otherwise, then they could be incorporated in the programmes of NEMA and lead agencies, or of local environment committees and non-governmental organisations operating in the area where the harm occurred.

The Community Service Act,[8] therefore, needs to be applied to environmental wrongs as well, not only minor offences in the realm of criminal law. This is because the effect of environmental wrongs goes beyond the confines of the area in which the wrong is committed. In fact, it may have transboundary effects, and the wrong is best remedied by voluntary action of the offender and the society. In fact, NEMA has designed a community service programme which is intended to be applied in all districts.

Underlying these approaches is the polluter pays principle. The polluter should repair the damage they have caused either by making actual reparation or paying the necessary monetary compensation to society.

3.3 OTHER ENVIRONMENTAL LAWS

THE WATER ACT, CAP 152

The Water Act is one piece of Uganda's environmental legislation with key provisions to enhance sustainable development. It provides for the use, protection and management of water use and supply. Important aspects in the Act include the following: -

(a) **Rights in water**. All rights to investigate, control, protect and manage water are vested in the government of Uganda, which is accordingly better placed to ensure that water resources are used sustainably.

(b) **Planning for water use**. The Act establishes the water policy committee, an inter-sectoral body whose function, among others, is to co-ordinate the preparation, revision and keeping to date the comprehensive action plan for the investigation, control,

[8] The Community Service Act, No 5 of 2000. And the Community Service Regulations No. 55 of 2001, specifying the nature and scope of work of a non-custodial nature that an offender may do in the community. See in particular sections 3, 4 and 5 of the Act and R. 12 of the Regulations.

protection, management and administration of water for the nation. Such planning may specify types of activities, development of works, which may not be done without the prior approval of the policy committee.

(c) **Control on the use of water resources**. The Act provides for the use of permits to use and supply water. A person who has to construct or operate any works or engage in the business of constructing boreholes needs construction and drilling permits respectively as provided in the Water Resources Regulations,1998. In addition, in order for a person to discharge waste into a water body the person has to acquire a waste discharge permit under the Water Waste Discharge Regulations of 1998 and the National Environment Standards for discharge of Effluent Regulations of 1999.

The permit system ensures that use of water is environmentally friendly and promotes sustainable development. These controls also ensure that water is not treated as a free good but as a good with a value to be paid for. This economic valuation of water is an important incentive for its conservation.

(d) **Water Easements**. An easement is the right of a person over the land of another. Under the Water Act and Water Resourses Regulations, an easement may enable a holder of a water abstraction permit to bring water to or drain water from their land over land owned or occupied by another person. In the same way, an easement may enable a holder of a waste discharge permit to drain waste from his land over the land owned or occupied by another person. The works for which an easement is granted have to be maintained and repaired so as to comply with development, which is sustainable.

(e) **Control over water works and water use**. An authorised person may enter land for the purposes of inspecting works for the use of water. He may take samples and make tests to find out whether water is being wasted, misused or polluted or whether the terms of any permit are being met. Non-compliance is an offence.

All these aspects of the Water Act have the object of sustainable use of water resources. Waste, misuse and pollution resulting in unsustainable use of water are prohibited.

THE LAND ACT Cap. 227

The Land Act provides for the tenure, ownership and management of land. Subject to Article 237 of the Constitution, all land in Uganda is vested in the citizens of Uganda and is owned in accordance with customary, freehold, mailo and leasehold land tenure systems.

Under section 43 of the Land Act, all owners and occupiers of land are to manage it in accordance with the Forest Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act, the Town and Country Planning Act and any other law.

Like the Constitution, the Land Act enshrines the Public Trust Doctrine and provides that the government or local government holds in trust and protects for the common good of all citizens of Uganda certain environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes. Accordingly under the Land Act, Government

has no powers to lease or otherwise alienate any natural resource mentioned above but may only grant concessions or licenses or permits in respect of that natural resource.

THE INVESTMENT CODE ACT Cap. 92

This law empowers the Uganda Investment Authority (UIA) to, among other things, attract and co-ordinate all local and foreign investments in the country to enhance economic development. Section 19(1)(d) makes it an implied term and condition of every holder of an investment license to take necessary steps to ensure that the operation of their business enterprise does not cause any injury to the ecology or the environment. This is in line with the principle of sustainable development.

THE UGANDA WILDLIFE ACT, CAP 200

The Act was enacted in 1996 to provide for sustainable management of wildlife, to consolidate the law relating to wildlife management, establish a coordinating, monitoring and supervisory body for that purpose. It fundamentally changed the way wildlife is managed.

The protection of wildlife under the Act is seen from two perspectives conservation within conservation areas and conservation outside those areas.

The Act preserves community property rights. Local communities and individuals that have property rights in land within the protected areas will be permitted to carry on activities compatible with conservation of wildlife resources. It should also be noted here that the Act recognises and guarantees the historic rights of individuals and communities which were recognised in previous laws such as the National Parks Act, the Forests Act, and the Game (Preservation and Control Act).

The relevant functions of UWA for the purposes of wildlife protected areas and wildlife management areas are among others to preserve selected examples of biotic communities in Uganda and their physical environment, and preserve populations of rare, endemic and endangered species of wild plants and animals and to generate economic benefits from wildlife conservation for the people of Uganda.

The Act also contains provisions that provide facilities for studying the phenomena in the wildlife conservation areas for the advancement of science and its understanding. It enables wildlife to have full protection in wildlife sanctuaries notwithstanding the continued use of the land in the area by the people and the communities ordinarily residing there.

The Act restricts entry into wildlife protected areas without authority. Any person who enters contrary to the provisions of the Act commits an offence. This is one way of controlling access to species in protected areas. In addition section 15 of this Act requires a developer desiring to undertake a project which may have significant effect on any wildlife species or community to carry out an EIA in accordance with the National Environment Act. Section 16 of the same Act obliges the Uganda Wildlife Authority in consultation with NEMA to carry out audits and monitor such projects that may have an impact on wildlife.

An important feature of the Act is the concept of wildlife use rights, which are tradable rights to hunt, farm, ranch, trade in or use wildlife for educational purposes. These wildlife use rights are transferable and in some cases, a transfer permit is needed especially for class A and class E. This kind of transfer is known as permitted transfer.

Wildlife use rights are not enjoyed in perpetuity and are not absolute. If there is non-compliance by a right holder with the terms of grant or any other sufficient reason, to which the grant of wildlife use rights was made or that it is expedient that a grant of a wildlife use right be revoked, it may be revoked subject to the conditions of the Act. However, such a holder of a wildlife use right may be entitled to compensation.

Outside protected areas, the Act provides measures for regulating and licensing professional trappers and hunters, and penalties for their non-compliance. It prohibits the taking of protected species so as to maintain their abundance.

By opening up the wildlife sector to popular participation, it is hoped that this new law will promote the conservation ethic and eradicate the view that wildlife is a property of nobody, which is available for taking and misuse.

THE MINING ACT 2003

This Act vests the ownership and control of all minerals in Uganda in the Government and provides for the acquisition of mineral rights and other related rights. The Act requires every holder of an exploration licence or a mining lease to carry out an EIA of their proposed operations in accordance with the provisions of the Environment Act. A holder of such permit is also required to carry out an annual environmental audit and to keep records describing how far the operations conform to the approved environmental impact assessment. The Act also provides for environmental protection standards, environmental restoration plans and environmental performance bonds in accordance with the Environment Act (Ss. 108 – 112).

THE NATIONAL FORESTRY AND TREE PLANTING ACT, 2003

This is an Act for the conservation, sustainable management and development of forests for the benefit of the people of Uganda and for the promotion of tree planting, among others. An EIA is required to be undertaken by a person intending to undertake a project or activity, which may, or is likely to have a significant impact on a forest.

THE LOCAL GOVERNMENT ACT Cap. 243

This is an important law for the enforcement of environment law given the policy of decentralization pursued by the government and the policy of environmental management at the lowest levels. The Local Government Act provides for the system of local governments, which is based on the district. Under the District there are lower local governments and administrative units. This system provides for elected councils.

The District Council is the highest political authority in the District. It has both legislative and executive powers to be exercised in accordance with the Constitution and Local Governments Act.

The Second schedule to the Act prescribes the functions of the Government that the District Council is responsible for. The following are the functions relevant to environmental management:

(a) land surveying,
(b) land administration,
(c) physical planning,
(d) forests and wetlands.
(e) Environment and Sanitation
(f) protection of streams, lake shores, wetlands and forests.

Under the district there are lower local government councils, which consists of: -

A Sub-county Council
A City Division Council
A Municipal Council
A Municipal Division and
Town Council

These Councils have legislative powers. The District Councils have power to enact District Laws (Ordinances) while urban, sub-county division or village councils may, in relation to their specified powers and functions, make bye-laws not inconsistent with national statutes or the constitution. Through this method, it is hoped that the district and other lower local councils will effectively control and manage their natural resources and environment.

A few other environmental laws are listed in the schedule attached hereto.

INTERNATIONAL TREATIES

Uganda has international obligations in the field of the environment which are imposed by operation of customary international law, treaties and general principles of law accepted by all nations. International standards have been used as pace-setters when setting national environmental standards.

Uganda's legal framework for environmental management takes into account the problems associated with transboundary resources such as shared lakes and rivers, aquatic biodiversity and the issues of migratory species of wild animals. Uganda is also signatory to a number of treaties that protect her sovereign territory from the illegal dumping of wastes or toxic substances as well as the illegal trade in genetic material, wild life and trophies.

CONCLUSIONS

A recurrent theme in the laws discussed above is that of public participation in the sustainable management of the resources. This, however, still needs to be strengthened through vigorous public awareness programs. The importance of enacting Ordinances and bye-laws at the lower government levels cannot be over emphasised.

Another important issue that is reflected in the current environmental laws is expansion of the application of the Polluter Pays Principle to ensure compliance.

Environmental protection calls for a multi-sectoral approach. Public participation is a necessity for the sustainable use and conservation of natural resources.

I hope this paper has helped enhance your understanding of the environment and the role you, as an individual and as a member of the public, should play in environmental management.

SCHEDULE OF OTHE ENVIRONMENTAL LAWS

1. The Plant Protection Act. Cap 31
2. Inland Water Transport (Control) Act Cap 356
3. National Agricultural Research Organisation Act Cap. 205
4. Agricultural Seeds and Plants Act Cap. 28
5. Atomic Energy Act Cap. 143
6. East African Community Act, 2001
7. The Prohibition of Burning of Grass Act Cap. 33
8. The Petroleum Act Cap. 149
9. The Petroleum (Exploration and Production) Act Cap. 150
10. The Animal Diseases Act, Cap 38
11. The Cattle Grazing Act. Cap. 42
12. The National Water and Sewerage Corporation Act, Cap. 317
13. The Fish Act Cap. 197
14. The Trout Protection Act Cap 199
15. The Town and Country Planning Act Cap. 246
16. The Public Health Act Cap. 281
17. The Penal Code Act Cap. 120
18. The Control of Agricultural Chemicals Act Cap. 29
19. The Rivers Act Cap 357
20. The Roads Act Cap. 358
21. Uganda National Bureau of Standards Act Cap. 237
22. Uganda National Council for Science and Technology Act Cap. 209
23. Vessels (Registration) Act Cap 362

OVERVIEW OF THE PRACTICAL ISSUES FACED IN THE ENFORCEMENT AND IMPLEMENTATION OF ENVIRONMENT LAWS IN UGANDA

Prepared by Justin Ecaat
Director for Environment Monitoring and Compliance,
NEMA

1.0 What is enforcement ?

"Enforcement" relates to those set of actions that government or other designated persons or entities take to achieve compliance to certain requirements within the regulated community and to correct or halt situations that endanger the environment or public health. The National Environment Act does not define the word enforcement. However, the Oxford English Dictionary defines the word enforce as:

(i) to compel observance of (a law etc),
(ii) impose (an action, conduct, …) and/or
(iii) persist in (a demand or argument).

Most environmental enforcement strategies derive from legal requirements that must be met by individuals, facilities and/or companies whose activities or operations cause or may cause undesirable environmental impacts. These legal requirements are an essential foundation for environmental and public health protection, but they are only the first step. The second essential step is compliance – getting the groups that are regulated to fully implement the requirements. Without compliance, the legal requirements will not achieve the desired results, since compliance does not happen automatically once legal requirements are issued. Achieving compliance usually involves efforts to encourage and compel behavioural changes needed to achieve compliance – hence the need for enforcement.

Enforcement actions, may include applying one or a combination of the following actions, among others:

- Inspections and monitoring to determine the compliance status of the regulated community and to detect and respond to violations;

- Negotiations with the violators or facility managers to develop mutually agreeable schedules and approaches for achieving compliance;

- Awareness creation to sensitize the regulated community on the requirements to be met,

- Taking legal action, where necessary to compel compliance; and,

- Compliance promotion among the regulated community through educational programmes, technical assistance and incentives, among others,

2.0 Why is there non-compliance?

Compliance occurs when stipulated requirements are met and desired changes are achieved, for example when standards are met. When compliance behaviour and the reasons for non-compliance are known, it is possible for authorised agencies and/or officials to adjust their enforcement strategies to achieve the desired compliance.

Some of the reasons for non-compliance may be associated with the following:

(i) The design of requirements, including legal requirements, affects the attainment of compliance goals. If the requirements are well-designed, then compliance will achieve the desired environmental results. If the requirements are poorly designed, then achieving compliance and/or the desired results will likely be difficult. Lack of clarity or complexity of legislation may cause failures to comply.

(ii) Knowledge of the requirements (laws) – ignorance of the laws and regulations within the regulated community may lead to violations.

(ii) Existence of an informal reporting mechanism to ensure that an offence comes to light other than through government control. More of ten than not, violations are noticed by the general public but no action is taken as enforcement action is generally perceived to be the responsibility of Government agents.

(iii) Sanction probability: in some instances knowledge of the possibility of a sanction being imposed if an offence has been detected can deter violation while the converse is also true.

(iv) Sanction level and severity – the speed with which a sanction is imposed may increase the impact of the law – e.g. on-spot fines are likely to deter the violator faster than waiting for court action. The severity and consequence of the sanction may also determine the nature of the compliance response by the regulated community.

(v) Limited monitoring capacity. If violators know that enforcement action is unlikely to be taken due to lack of monitoring, violations are likely to occur unchecked.

3.0 What are we expected to enforce.

The basis of the enforcement actions in environment management is principally derived from the provisions in the legal framework for environment management as contained in the supreme law (the Constitution) and the National Environment Act, Cap 153 of 1995, its subsidiary Regulations as well as in other sectoral laws.

For environment management, to-date the following specific laws and Regulations are in place and form the basis for most of the enforcement actions:

(a) The Constitution
(b) The National Environment Act,
(c) Environmental Impact Assessment Regulations, 13/1998.
(d) The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations, 5/1999.
(e) The National Environment (Waste Management) Regulations 52/1999.
(f) The National Environment (Noise Standards and Control) Regulations, 2003,
(g) The National Environment (Hilly and Mountainous Areas Management) Regulations, 2/2000.
(h) The National Environment (Wetlands, Riverbanks and Lakeshore Management) Regulations, 3/2000.
(i) The National Environment (Minimum Standards for Management of Soil Quality) Regulations, 59/2001.
(j) The National Environment (Management of Ozone Depleting Substances and Products) Regulations 63/2001.
(k) The National Environment (Conduct and Certification of Environmental Practitioners) Regulations, 2003.
(l) Other relevant and applicable sectoral laws.

In order to further support the regulatory framework as outlined above, a number of guidelines have been issued to guide the sustainable use of environmental resources. The key emphasis of the guidelines is to provide the regulated community with guidance on best practices that can bring them into compliance with the laws and regulations. To-date, these other supportive instruments that have been put in place or are being developed by NEMA to ensure compliance to environmental requirements include:

- Guidelines on Environmental Impact Assessment,
- Guidelines for Environment Auditing,

- Environmental Audit manuals for 5 priority sectors that include, tannery and leather industry, sugar industry, beverage industry, dairy industry and garages and petrol stations.

- Gazetting of Environmental Inspectors at central Government lead agency and Local Government levels. A training programme is being planned to equip the inspectors with necessary inspection skills.

- Development of capacity for monitoring through acquisition of portable lab equipment.

- Regulations on: Audit; Oil spillers liability; Easements; Toxic chemicals; and, Air quality standards.

- Guidelines on: Air quality; Solid waste disposal; Conservation of biological biodiversity; Management of forests; Sustainable management of rangelands; Management of dangerous materials and processes.

- Guidelines on soils

4.0 Aspects requiring enforcement

The aspects requiring enforcement can broadly be categorised into two, namely brown issues and the green issues.

(A) Brown issues: These include the following aspects

(i) Pollution control including noise, water and air pollution
(ii) Waste management and disposal and
(iii) Other urban or industry related environmental concerns.

(B) Green issues: These include:

(i) Control of wetland abuse and encroachment,
(ii) Management of hilly and mountainous areas.
(iii) Protection of important natural resources such forests, lake shores and river banks,
(iv) Land degradation concerns such as deforestation, among others.

5.0 Enforcement Strategy

The enforcement strategy required to enforce the existing regulatory framework is based on operationalizing the hierarchy of different environment management/enforcement levels including:

- The individual level (including individual persons, communities and/or companies, among others).

- Government agency or local authority level that includes actions by NEMA and other agencies (lead agencies).

5.1 Key elements of an enforcement strategy.

The following are considered to be critical pillars of an enforcement strategy

(i) Compliance Promotion among the regulated community at all levels– this could be through:

- simple awareness programmes, e.g. publicizing all the laws and regulations as and when they are gazetted, preparing environmental management brochures on critical subjects relevant to the regulated community,

- Providing training and technical assistance to the regulated community.

Compliance promotion is necessary especially where the public does not know much about regulations surrounding compliance and the consequences of not complying to such regulations.

(ii) **Development and strengthening of environment management structures based on the subsidiarity Principal**: this means that for effective enforcement of environmental requirements, action should be taken at the lowest possible level of enforcement, including at the **individual level** or at **the domestic**, **developers level** or **the lowest local Environmental Committee level**.

The rational for this strategy is that even a most powerful NEMA or the most effective inspection programme can never be everywhere to notice the different kinds of environmental violations to be able to take immediate enforcement actions to control or forestall any such violations. In such a situation, the best possible enforcement mechanisms is that which relies on all pillars of environmental management, including those at the lowest possible level coming into play to ensure enforcement of the laws and Regulations or at-least be able to report the violations as they occur.

(iii) **Creating and strengthening an institutional mechanism for enforcement and monitoring compliance** – this involves activities such as strengthening inspections mechanisms by training of gazetted inspectors and creating enforcement structures at all levels.

(iv) **Promotion of Corporate environment management programmes** among the regulated community through activities such as establishment of Environment management systems (EMS) which clearly spell out the commitments and actions for sound environmental management based on individual or corporate commitment to comply with the regulatory regime without having to be forced to do so by enforcement agencies.

(v) **Use of command and control approaches**

Quite often compliance does not happen automatically and achieving it may require efforts to encourage and compel behavioural change for attainment of the desired enforcement efforts. Under such circumstances, the command and control strategies that can be adopted may include the following:

- Carrying out routine compliance monitoring and inspections and taking punitive measures against violators. Such inspections can allow for maintaining of databases of regulated community and compliance status.
- Implementing the polluter pays principal
- Imposing fines on violators.
- Command and control Enforcement strategy based on issuance of restoration orders and Improvement notices
- Use of Compliance agreements after conduct of Environment audits
- Use of permits and licenses for regulatory control

The effect or these instruments is to sound a warning to the violator to take such action to comply with the environmental management requirements in question.

(vi) Enforcement strategy based on use of Police and courts of law to achieve compliance in cases on non- compliance to improvement notices.

Many times even if an Environmental Inspector has taken action to restrain an environmental abuser, it is not uncommon for the violator to ignore such restraint and continue to abuse the environment. This is very common especially with violations involving the green environment. Under such circumstances, the only fallback position is to refer the matter to the Police and courts of law.

Weaknesses of this option

Until recently, the Police have not been fully on board with regard to environmental crime. The preparedness of the Police to handle environmental crime has only been developed recently and more needs to be done to develop their capacity to the extent that can have meaningful effect country-wide and for the many different environmental crimes.

(vii) Use of economic incentives and dis-incentives

(viii) Use of other non-contact approaches such as phone calls, warning letters, or the press, among others. This has particularly been of use where the violators do not wish their violations to be publisized and would be inclined to comply with the requirements to avoid negative publicity and for the sake of protecting their corporate image.

(ix) **Use of civil society groups**: The role played by civil society groups is ensuring compliance of environment management requirements can not be underestimated. Because the civil society can put pressure on both Government and the violators, it can serve a dual role of both an informer and whistle blower to the regulatory authorities as well as an advocate for enhanced enforcement under situations of laxity in enforcement.

6.0. Challenges in enforcement

The analysis of the causes of continued abuse of the environment needs to internalize the different scenarios and pressures that the environment continues to experience. These include, among others the following:

(i) **While it is generally an environment management principle that everybody has a duty to care for the environment, and while for example it is expected that every landowner, occupier or user who is adjacent or contiguous with a wetland has a duty to prevent the degradation or destruction of the wetland, and to maintain ecological and other functions of the wetland, in practice, this is not happening. With this lack of individual responsibility, management of the environment has tended to be treated as "**NEMA's Bussiness"

(ii) **There is the problem arising from failures at different institutional linkages for environment management. Whereas for example a number of natural resources are held in trust by Central Government or local Government for the common good of the people of Uganda, some examples of natural resources abuse have included cases where Local Authorities have been the very violators of these constitutional and legal provisions. Where this has happened, local authorities have indicated that they converted these natural resources for the sake of providing their communities with economic growth opportunities and for fighting poverty. It is therefore a dilemma that the very institutions entrusted with the protection of natural resources have in some cases not assisted the efforts for their conservation.**

(iii) Issuance of Land Titles in wetland areas by the Central and Local Governments

Whereas it is a constitutional and legal requirement that areas such are wetlands are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are incidences where the very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued land titles. This continued issuance of land titles on wetland areas has made enforcement of the laws on wetlands rather difficult as those who are issued with titles view enforcement actions against them as contradictions within the Government institutions.

(iv). Lack of enforcement capacity at all levels

There is the problem of enforcement of the legal requirements for environment protection Arising from the fact that whereas enforcement of environment Regulations is expected to be done through a hierarchy of enforcement levels from national (NEMA), Districts down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of environment abuse. For example, the efforts to build capacity of Local Environment Committees as organs for environment management at lower community levels have not yielded enough positive action in the area of enforcement.

In addition, while the responsibility for environment management has been vested under the local authorities, cases of local authority intervention on environment abuses are still few, implying that even where local authority intervention would have been enough to stop the abuse, such cases still continue to be referred to NEMA. It should be stressed that this state of affairs for a dispersed problem such as environment abuses requires an enforcement and intervention mechanisms that is closer as possible to the community level if tangible results are to achieved.

(v). Violations of environment management requirements during holidays or awkward hours

Without an effective grassroots enforcement mechanism, it has been extremely difficult to control indiscriminate environment abuses such as dumping of materials in wetlands along the roads and other remote areas by anonymous individuals such as truck drivers during holidays and night hours when such abusers have full knowledge that Government enforcement officers are obviously not on duty and therefore are not

readily available to take action. Time and again, people living in and around areas where environmental abuses have taken place have indicated that such abuses are done by unknown individuals during awkward hours. It still remains an uphill task to prosecute these cases as the violators are difficult to get by and with local enforcement structures not in place to apprehend them.

(vi). How to transfer management and enforcement responsibility to local authorities and to resource users level.

With the expansion of Central Government enforcement machinery not likely to happen in the foreseeable near future, it is plausible to believe that increased local authority and local community role on matters of enforcement through enhanced community policing could be a more sustainable way to improve enforcement and stem further environmental degradation. However, there still remains a fundamental weakness in the sense that local authorities have not translated the authority vested under them for natural resources management into meaningful action as far as natural resources are concerned. The approach adopted by the Wetlands Inspection Division for community wetland management planning in certain parts of the country is worthy support in this regard. However, lessons learnt from this approach are yet to be popularized to other communities.

(vii). Need to harmonize urban planning and land–use in general with modern wetland conservation goals.

Until now, NEMA continues to receive development proposal on wetland areas that have been demarcated as plots by planning authorities. This apparently continues to send wrong signals to other wetland users who seem to perceive a sense of no action being taken in especially urban areas where wetland encroachment continues. In Kampala District, most of the wetlands which served as flood relief areas were allocated for industrial and residential developments and this trend has not been halted completely yet. Worth mentioning is the difficulty of enforcing planning requirements in peri-urban flood prone areas where the urban poor communities have massively and indiscriminately encroached into the wetlands, such as is the case in Bwaise and Bukoto areas of Kampala.

(viii). Poverty and natural resources use relationship

Over the recent years, there appears to be increasing cases of encroachment into natural resources, mostly wetlands and forest areas, in the name of fighting against poverty. While some of these activities are out-rightly not compatible with natural resources conservation goals, their promoters have vigorously defended them as intended to assist in the fight against poverty. Activities such as brick making in wetlands which are done for economic gains have tended to give no regard at all to conservation nor restoration of the affected wetlands. Enforcement of the legal requirements under such situations has generated a lot of unrest especially as the populations of poor communities involved have in most cases attracted sympathy against the enforcement agents.

7.0 Required action to enhance enforcement capacity

(i) Further building of enforcement capacity at lead agency, district and community levels.
(ii) Need to show-case (publicise) examples of enforcement success stories.
(iii) Further enforcement actions yet to be operationalised include, among others

- Industries to fulfil the requirement for self monitoring and self reporting and submit annual monitoring reports to NEMA as required by law.
- Enforcing the" polluter pays principle" for those discharging beyond set standards.
- Court action against violators of environment management requirements is still very limited in scope.

Conclusion

While there is the option to institute command and control enforcement strategies for attainment of compliance to environmental management requirements, the best enforcement scenario would be one that prevents damage rather than address it when the damage has already been done**.** This is particularly so because **i**t is sometimes impractical to restore the environment or enforce actions for restoration of the environment that has already been damaged.

In addition, on matters of the environment, there is need for all the various structures of environment management at all levels, including the general public, NGOs and Civil Society Groups, to play their role if meaningful enforcement is to be achieved, as opposed to the current perception that enforcement is the responsibility of Government institutions such as NEMA and the Police.

ANNEX 6

ACCESS TO ENVIRONMENTAL JUSTICE, THE ROLE OF THE JUDICIARY AND LEGAL PRACTITIONERS; EXPERIENCES AND LESSONS LEARNED.

BY: HON. JUSTICE RUBBY AWERI OPIO
JUDGE OF THE HIGH COURT OF UGANDA, KAMPALA

Introduction :

Environmental law is a comparatively new branch of domestic and international law.
Unlike older areas of law which have already acquired fairly defined concepts, principles and procedures, it is still in the process of being moulded. In this process of moulding, the Judiciary and the legal practitioners have a vital role to play. For the above reasons it is important for the Judiciary and the legal practitioners to have a clear understanding of environmental problems and creative vision of how the law can deal with them.

Much of what I will discuss will be based on how our Courts have been responding to environmental issues and the level of development of environmental jurisprudence. The paper will also tackle limitations to access to justice and way forward. **In** my view what the organizers of this workshop want is an inventory of what the bench and the bar have done in relation to environmental issues affecting our regime and the challenges they have to go through.

I will start with definition of some terms and general background.

The Term Access to environmental justice:-

According to UNEP access to justice in reference to environment means judicial and administrative procedures available to a person aggrieved or likely to be aggrieved by an environmental issue.

The Scope of Environmental Justice:-

According to Friends of the World Special briefing No.7 of November 2001, the concept of environmental justice is based on two basic premises - the first one is that everyone should have the right and be able to live in a healthy environment with access to enough environmental resources for a healthy life, and that it is predominantly the poorest and least powerful people who are missing those conditions.

Secondly, environmental justice also implies environmental responsibilities and these responsibilities are on the current generation to ensure that a healthy environment exists for

the future generations, and or countries, organizations and individuals in this generation to ensure that development does not create environmental problems or distribute environmental resources in ways which damage other people's health.

The above concept is globally known as the principle of sustainable development which was conceived in 1992 during the Earth Summit in Rio De Janeiro, Brazil.

In Uganda sustainable development is defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

It is development which uses land, water, plant animal and genetic resources in environmentally friendly and non-degrading, technically appropriate, economically viable and in a socially acceptable manner.

Man derives life from the environment. One of the oldest books of civilization, the Bible states that God created environment first and from that material created man by blowing the sprit of life. I am told scientists are at advanced stages of creating human beings using life in the environment and DNA cells. What I want to emphasize is that man and environment are not separatable. Man derives all his survival from environment.

These are: Food, Security, Leisure, Tools for survival . Transport, Water, Medicine, Fuel, Shelter, Spiritual.

Despite all that we gain from the environment, man has not been living on this planet earth responsibly. Thus about a hundred years ago, ANTON CHEKHOY, a renowned Russian Dramatist and story writer, warned mankind against environmental degradation:

> **"Human beings have been endowed with reason and a creative power so that they can add to what they have been given. But until now they have been not creative, but destructive. Forests are disappearing, rivers are drying up, wildlife is becoming extinct, the climate is being ruined and every passing day the earth is becoming poorer and uglier."**

Those wise words are still relevant to this day. The media is full of concern about our environmental degradation.

Because of the importance of the environment to mankind, the need to use law to protect the environment and sustainable development becomes crucial, hence the role of the judiciary and Legal Practitioners. As was expressed by the **UNEP Executive Director** during the Global Judges symposium in Johannesburg South Africa, 18th August 2002:

> **"Law is the most prevalent and enduring foundation for orderly responses to global, regional and national environmental problems……..At the national level, law remains the most effective means of translating sustainable development policies into action. A Judiciary well informed of the rapid expanding boundaries of environmental law and in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to Environmentally Friendly Development, can playa critical role in the vindication of the public interest in a healthy and secure**

environment through the interpretation, enhancement and enforcement of environmental law".

Last year the **Deputy chief Justice** in a similar workshop like this one, held the same view and it is worth quoting:

> **"Solid legal framework and institutions are therefore essential in achieving sustainable development and effective nature resource management, whether the focus is food security, water quality, agricultural production, land use and management; well designed Laws and functioning legal system have a crucial role to play in developing countries like ours. These laws and institutions help to build foundations for good governance, resolve conflict and as a result maintain peace and security of the person and property. They protect rights and define responsibilities. They enable meaningful participation of all types of stakeholders from Central Government to rural communities. These laws when appropriate, fair and predictable encourage investment and facilitate the operations of markets. They also set norms for environmentally responsible behavior".**

As a matter of emphasis, at the end of the above symposium, the Global judges formulated principles, the **Johannesburg principles** which should guide the judiciary in promoting the goals to sustainable development through the application of the rule of law and democratic process. Those principles were based on the following considerations:

- *An independent judiciary and judicial process is vital for the implementation, development and enforcement of environmental law and that members of the judiciary as well as those contributing to the judicial process at the national, regional and global levels are crucial partners for promoting compliance with, and implementation and enforcement of international and national environmental law.*

- *The rapid evolution of multilateral environmental agreements, national constitutions and statutes concerning the protection of environmental increasingly requires the Courts to interpret and apply new legal instruments in keeping with the principles of sustainable development.*

- *The fragile state of the global environment requires the judiciary as a guardian of the rule of law, boldly and fearlessly to implement and enforce applicable international and national laws, which will assist in alleviating poverty and sustaining and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.*

- *The judiciary has a key role in integrating Human Values set in the United Nations Millennium Declaration: Tolerance, Respect for nature and shared responsibility into contemporary global civilization by translating these shared values into action through strengthening respect for the rule of law both internationally and nationally.*

- *The Judiciary, well informed of the rapidly expanding boundaries of environmental law and aware of its role and responsibilities in promoting the implementation, development and enforcement of laws, regulations and international agreements relating to sustainable development, plays a critical role in the enhancement of public interest in a healthy and secure environment.*

- *The importance of ensuring that environmental law and law in the field of sustainable development feature prominently in academic curricula, legal studies and training at all levels, in particular among judges and others engaged in the judicial process.*
- *The Deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to lack of effective implementation, development and enforcement of environmental law.*

- *The need to strengthen the capacity of judges, prosecutors, legislators and all persons who playa critical role at national level in the process of implementation, development and enforcement of environmental law.*

- *The people most affected by environmental degradation are the poor and that, therefore, there is an urgent need to strengthen t he capacity of the poor and their representatives to defend environmental rights, so as to ensure that the weaker sections of society are not prejudiced by environmental degradation and are enabled to enjoy their right to live in a social and physical environment that respects and promotes their dignity.*

In a nutshell, what can be derived from the **Johannesburg principles** is that since **the Rio Declaration in 1992** the issue of access to environmental justice has taken a global and national dimensions.

Mandate:

The key prayers in the administration of justice are the judiciary and the Bar. The Courts of Uganda derive judicial power from the constitution. Article 126 (1) of the constitution provides that judicial power is derived from the people and shall be exercised by the Courts in the name of the people and in conformity with the law and with the values, norms and aspirations of the people.

The same further provides that:

(a) justice shall be done to all irrespective of their social or economic status;
(b) justice shall not be delayed;
(c) Adequate compensation shall be awarded to victims of wrongs;
(d) Reconciliation between parties shall be promoted; and
(e) Substantive justice shall be administered without undue regard to technicalities.

The constitution further guarantees independence of the judiciary. Access to justice is therefore a constitutional guarantee.

In Uganda, jurisdiction to hear matters with regard to the enforcement of constitutional and other laws related to the environment lies with the Magistrates' Court and the High Court. In cases of the decision of NEMA on environment impact assessment no appeal shall lie to any Court but High Court shall have supervisory powers.

Need for access:-

A number of environmental issues are provided for under Article 245 (a) (b) and (c) of the Constitution; The National Environment Act (NEA) and the land Act and many other Acts and

regulations. All those revolve around the following:

(a) The right to protect and preserve the environment from abuse; pollution and degradation;

Pollutions of:

(i) water - drinking water, water supply, beaches, marine life; inland water, industrial affluent.
(ii) air - motor vehicles, industrial emission and smoke etc.
(iii) Land - forest, soil pollution, soil erosion, conservation, protection, exploitation of mineral resources, agriculture.
(iv) Noise - motor vehicles, aircraft, industrial noise prayers, discos, etc.
(v) Waste - waste management, disposal, packaging and recycling.
(vi) Hazardous substances - chemicals, radio active and neuclear materials, chemicals, genetically engineered organisms, etc.
(vii) Other pollutions - Odors, tobacco smoke, pesticides, oil litter, vibration.

(b) Protection of wild life;
(c) Protection of flora/vegetation;
(d) Industrial compliance - Licenses and permits; (e) Poverty;
(1) Good governance.
(g) Sustainable development.
(h) Environmental awareness.

Benchmark indicators of Access to Justice:

I. Legal and administrative framework.

(i) The 1995 constitution of Uganda.

The constitution provides for environmental protection and conservation in a holistic manner right from its national objectives and directive principles of state policy. It provides that the state shall promote sustainable development and public awareness of the need to manage land, air, water and resources in a balanced and sustainable manner for the present and future generations. It also provides for the protection of important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of all the people of Uganda.

It further provides that the utilization of natural resources are to be managed in such a way as to meet the development and environmental needs of present and future generations; and in particular the state is required to take all possible measures to prevent or minimize damage and destruction to land, air, water resources due to pollution or other causes.

Article 39 of the constitution provides for the right to a clean and healthy environment. That article is supported by Article 50 which gives any person locus standi to take judicial action to redress the breach of a fundamental right, irrespective whether the breach affects him directly or not.

Article 245 of the constitution empowered parliament to provide for measures intended to:

(a) protect and preserve the environment from abuse, pollution and degradation.

(b) to manage the environment for sustainable development, and
(c) to promote environmental awareness.

As a result of the above, numerous statutes were enacted as we shall see shortly.

(ii) National Environment Act Cap. 153 Laws of the Republic of Uganda Revised Editions, 2000 volume VII.

The above law commenced operation for sustainable management of the environment.

The Act sets out major principles of environment management, namely:

- The right to a healthy environment.
- Public participation.
- Sustainable development.
- Polluter pays principle.
- Environmental awareness.
- Environmental assessments of proposed projects. Environmental co-operation.
- Access to justice etc.

The Act also established the National Environment Management Authority. Its functions are provided under section 6 of the Act.

The Act grants powers to the District to manage the environment: See Section 14. In doing that they have powers to make bye-laws. A number of districts have come up with such bye-laws e.g. Masindi District.

The Act makes it mandatory for certain projects to have environmental impact assessment before they are undertaken. See part V of the Act.

The Act provides for offences under part XIII of the Act i.e. section 95-102. The act also provides for the remedies that Court can award:

(i) an environmental restoration order.
(ii) forfeiture of the substance, equipment and appliance to be borne by the accused.
(iii) the cancellation of any license, permits or other authorization given under the Act.
(iv) that in addition to any fine, the accused does community work that promotes the protection of the environment.
(v) the issuance of restoration order against the accused.
(vi) Imprisonment or fine ranging from three months to 36 months, shs.300,000/=, shs.3,00,000/= respectively.

Other legislations:-

The following are other legislations that contain principles relating to access to environmental justice:

- The Local Government Act 1997 volume X, Laws of Uganda 2000 Revised Edition. (Principles of public participation).

- Water Act Cap.152 Laws of the Republic of Uganda 2000 Revised Edition Vol. VII. (deals with sustainable use of water and public participation).

- The land Act Vol. IX Laws of the Republic of Uganda 2000 Revised Edition. (sustainable use of resources and public trust doctrine).

- The National Environment (control of smoking in public places) Regulations 2004.

The above law provides that every person has the right to clean and healthy environment and the right to be protected from exposure to second hand smoke. It also provides that every person has a duty to observe measures to safeguard the health of non-smokers. It further provides that every head of family is responsible for creating a climate for children to be free of second hand smoke: Regulation 3.

Under Regulation 4 there are public places where smoking is prohibited. They are:

- Offices, office buildings and work places including individual offices, public areas, corridors, lounges, eating areas, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries, amenity areas;
- Court buildings;
- Factories;
- Hospitals, clinics and other health institutions;
- Educational institutions of all levels;
- Premises in which children are cared for;
- Public places of worship;
- Prisons;
- Police cells;
- Public service vehicles and other means of public transport terminals, including airports and airfields;
- Retail establishments including markets and shopping malls;
- Cinemas and theatrical performance halls;
- Sports stadia.

Under Regulation 5 there are places where smoking is restricted by providing designate rooms in which smoking can take place. These are:

- Public paces of lodging;
- Bars;
- Restaurants;
- Discotheques.

Regulation 13 provides for penalties.

II. <u>Experiences and Lessons learned</u>

In light of the above provision there has been an increase in environmental jurisprudence especially

in the field of public interest litigation which can be demonstrated by a growing number of cases. One of the leading cases on the various aspects of access to environmental justice is the case of **Greenwatch Vs. Attorney General & another, Miscellaneous Cause No. 140/2002** where Ag. Justice Lameck N. Mukasa made several landmark pronouncements on several aspects of access to environmental justice.

In that case, Greenwatch which is a Non-governmental organization registered and incorporated as a Company Limited by guarantee with the objectives of "watching" on issues and problems of environmental management sued the Attorney General and the National environmental management Authority (NEMA) seeking the following orders and declarations:

1 A declaration that manufacture, distribution, use, sale, disposal of plastic bags, plastic containers, all other forms of plastic commonly known and referred to as "kavera" violates the rights of citizens of Uganda to a clean and healthy environment.

1 An order banning the manufacturer, use, distribution and sale of plastic bags and plastic containers of less than 100 microns.
1 An order directing the second respondent to issue regulations for the proper use and disposal of all other plastics whose thickness is more than 100 microns including regulations and directions as to recycling re-use of all other plastics.
1 An environmental restoration order be issued against both respondents directing them to restore the environment to the state which it was before the menace caused by plastics.
1 An order directing the importers, manufacturers, distributors of plastics to pay for the costs of environmental restoration.
1 No order be made as to costs.

When the matter came for hearing, the State Attorney who represented the Attorney General raised three preliminary points of objection:

The first one was that the application did not disclose a cause of Action against the Attorney General;

The Second one was that the application was not proper before Court in that it was brought by the Applicant on behalf of other Ugandans who had not authorized the Applicant to do so and without leave of Court as legally required under order 1 rule 8 of the Civil Procedure Rules before filing a representative suit.

Thirdly that the application is supported by defective affidavits which should be rejected. I shall not dwell on this objection in this paper.

On the first objection it was contended for the Respondents that the application did not satisfy the three elements to support a cause of action as was set out in **Auto Garage V s Motokov (No.3) 1971 EA 514** that:

(i) the Plaintiff (Applicant) enjoyed a right;
(ii) that the right has been violated;
(iii) and the defendant (Respondent(s) is liable.

The Learned Judge observed that since the Applicant was a Ugandan company it was entitled to a right to a clean and a healthy environment under Article 39 of the Constitution and Section 4 (1) of the National Environment Statute, Statute 4/95 which provides that every Ugandan has a right to a clean and healthy environment.

The Learned Judge held further that the Applicant's right and cause of action was based on the allegation that the uncontrolled and indiscriminate use and disposal of plastics had caused harm to the environment and the plastics used as carrier bags, containers were dangerous to human health and life.

The Learned Judge made further references to:

Article 20 (2) of the Constitution which provides:

> **"The rights and freedom of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of the Government and by all persons.**

Article 245 of the Constitution which provides:

"Parliament shall, by law, provide for measures intended-
(a) to protect and preserve the environment from abuse, pollution and degradation.
(b) to manage the environment for sustainable development; and
(c) to promote environmental awareness,;

The Constitution under the National Objectives and Directive Principles of State Policy Objective XXVII provides:- J

"The Environment"

(i) The State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations.
(ii) The state shall promote and implement energy policies that will ensure that peoples' basic needs and those of environmental preservation are met".

On the cause of action against t he Attorney General, the Learned Judge concluded as follows:

> **"I have studied the application and the two affidavits filed in support and found them pointing a finger at the State that it has failed or neglected its duty towards the promotion or preservation of the environment. The State owes this duty to all Ugandans. By so failing or neglecting the government is in breach of its duty towards the citizens of Uganda. Any concerned Ugandan has a right of action against the Government of the Republic of Uganda, for that matter against the Attorney General in his representative capacity, to seek the enforcement of the failed or neglected duty of the State"**

On the cause of action against the National Environmental Management Authority, the Learned

Judge observed that NEMA had a statutory duty under Section 3 of the NEMA Statute to ensure that the principles of environmental Management were observed i.e.

a) to assure all people living in the country the fundamental rights to an environment adequate for their health and well being

b) to establish adequate environmental protection standards and to monitor changes in environmental quality;

c) to require prior environmental assessment of proposed projects which may significantly affect the environment or use of natural resources.

d) to ensure that the true and total costs of environmental pollution are borne by the polluter.

Other functions as stipulated in Section 7 of the Statute.

The Learned Judge considered the above duties and functions of the 2nd Respondent and concluded that it had failed in its Statutory duty to ensure that the principles of Environmental Management were observed, which duty it owed to the citizens of Uganda. Hence there was a cause of action against it.

On the second leg of the objection that the Applicant had no locus before the Court in that it did not comply with the provisions of Order 1 rule 8 of the Civil Procedure Rules, the Learned Judge followed the decision of the Principal Judge in the case of **the Environmental Action Network Ltd Vs The Attorney General and National Environmental Management; Miscellaneous Application No. 39/2001** where he stated

> **"--------the State Attorney failed, in his preliminary objection, to distinguish between actions brought in a representative capacity pursuant to Order 1 rule 8 of the Civil Procedure Rules, and what are called Public interest litigation which are the concern of Article 50 of the Constitution and S1 26 of 1992. The two actions are distinguishable by the wording of the enactments or instruments pursuant to which they are instituted. Order 1 rule 8 of the Civil Procedure Rules governs actions by or against the parties (i.e. Plaintiff or defendant) together with parties that they seek to represent and they must have similar interest in the suit.**
>
> **On the other hand, Article 50 of the Constitution does not require that the Applicant must have the same interest as the parties he or she seeks to represent or for whose benefit the action is brought".**

The Learned Judge accordingly concluded that the wording of Clause 2 of Article 50 grants locus to any concerned person or organization to bring a public interest action on behalf of groups or individual members of the country even if that group or individual is not aware that his fundamental rights or freedom are being violated.

On Public awareness, the Learned Judge observed:

> **"There is Limited Public Awareness of the fundamental rights or freedom provided for in the Constitution, let alone legal rights and how the same can be enforced. Such**

illiteracy of legal rights is even evident among the elites. Our situation is not much different from that in Tanzania where Justice Rukangira, in the case of Rev. Christopher Mtikilla Vs The Attorney General, High Court Civil case No.5 of 1995, stated:

"Given all these and other circumstances, if there should spring up a public spirited individual and seek the Court's intervention against legislation or actions that prevent the Constitution the Court, as guardian and trustee of the Constitution and what it stands for, is under an obligation to rise up to the occasion and grant him standing"

In conclusion I find the above case very pertinent on the following aspects of access to environmental justice:

- Procedural issues;
- Cause of action.
- Locus Standi; and
- Public awareness.

The above authorities not only demand but provoke the bench and the bar to stand for those who cannot speak for themselves as a matter of Constitutional duty.

Other cases on access to environmental justice

1. **<u>Greenwatch & another Vs. Golf Course Holdings HCCS No. 834/2000.</u>**

   The above suit was brought under Section 72 of the NEMA Statute, Statute 4/9.5.,.-The Plaintiffs, renown public litigants claimed that the Defendant was constructing a hotel on a wetland and green areas in Kampala against the law on sustainable Development.

2. **National Association of Professional Environmentalists (NAPE) Vs. AES Nile Power Ltd, High court Miscellaneous Cause No. 286/99.**
   The above case is on the controversial AES Nile Power project at Bujagali. The Applicants took an action to restrain the respondent from concluding a power purchase agreement with the Government of Uganda until NEMA had approved an Environmental Impact Assessment (EIA) on the project as required by Section 72 of the NEA. It was contended that a protective measure with the project could invoke as part and parcel of <u>accessing the constitutional guarantee of the right to a clean and a healthy environment</u> and therefore avoiding compliance was directed at the NEMA statute hence the Constitutional Regime of environmental rights in Uganda. Hon. Justice Okumu held among other things that Section 72 of the NEMA Statute was an enactment of a class actions and public interest litigation and abolishes the restrictive standing to sue on locus standi doctrine by stating that a Plaintiff need not show a right or interest in the action.

3. **The Environmental action Network Ltd vs. The Attorney General and NEMA Miscellaneous Cause No. 39/2001.**

   The above case is on a right to clean environment. The Hon. The Principal Judge held *inter alia* that the applications brought under Article 50 of the Constitution are governed by the fundamental rights and freedoms (enforcement procedure) Rules S1 No. 26/92. Hence no need for notice of intention to sue, that being public interest litigation.

4. **Greenwatch Vs. Hima Cement 1994 Ltd.**

   This was on the right against pollution. Hima Cement Factory was found to be emitting over 80 tons of cement dust into the atmosphere from its factory. The same was causing harm and damage to people, animals, crops and the general environment. The Plaintiff took an action as a public litigant to stop the cement factory from polluting the environment, seeking pollution and environmental restoration order. The matter was however resolved amicably.

5. **Greenwatch Vs. The Attorney General and Uganda Electricity Distribution Company Ltd.**

   The above case illustrates the point that access to environmental justice requires access to information as provided by Article 41 of the Constitution.

6. **Greenwatch Vs. Uganda Wildlife Authority and Attorney General Miscellaneous Application No.92/2004 (Arising from Miscellaneous Application No.I5 of 2004).**

   The Applicant whose objectives include among others protection of the environment, including but not limited to flora and fauna, increasing public participation in the management of the environment and natural resources, enhancing public participation in the enforcement of their right to a healthy and clean environment brought an action against the Respondent for a temporary injunction restraining them from exporting, transporting, removing, relocating any chimpanzee from Uganda to the Peoples' Republic of China, or any other place or country in the world until the hearing and determination of the main application.

The main grounds of the application were set in paragraph 9-18 of the Affidavit in Support of the application:

9. That by removing chimpanzees from their natural habita1 and exporting them to China the Respondents would violate the Applicant's right to a clean and healthy environment as enshrined in the Constitution.

10. That the Constitution demands that the state and all its such organs protect the natural resources of Uganda including flora and fauna and as the decision to export chimpanzees from Uganda contravenes this directive principle of state policy.

11. That the decision to export chimpanzee is null and void as it was made ultravires the powers of the Respondents.

12. That the law empowers the Respondents to protect flora and fauna where they are and have no powers to alter the environment or move flora and fauna in away that is not in the best interest of the environment.

13. That the decision to export chimpanzees contravenes the Constitution directive principle of state policies that requires the state to ensure conservation on all natural resources.

14. That it is the duty of all the people of Uganda including the Applicants to uphold and defend t he Constitution and that this application is made in that spirit.

15. That Applicants, and all other citizens of Uganda cannot enjoy a clean and healthy environment

unless it had all its amenities, to wit air, water, land and mineral resources, energy including solar energy and all plant and animal life.

16. That the Applicant would therefore be aggrieved by the decision and the action of the Respondents in exporting chimpanzees from Uganda, which action subtracts an essential ingredient of their environment.

17. That it is estimated that there are only 5000 chimpanzees left in Uganda and therefore any further reduction in this number significantly affects the fauna component of the environment in Uganda.

18. That chimpanzees are not goods or chattels, they do not belong to the Government of Uganda but are natural heritage, and a gift from God and the Respondents are only protecting them as trustees of the people of Uganda. "

When the matter came for hearing, Learned Counsel for the Respondent, Dr Byamugisha raised a preliminary objection and submitted that the application was bad in law for want of a statutory notice against the Respondents. Mr. Kenneth Kakuru who appeared for the Applicants contended that the requirement for Statutory notice obtains only in ordinary suits but not where suits are brought under Article 50 of the Constitution to redress violation of Constitutional rights. He relied on the case of **Dr J.W. Rwanyarare and others Vs Attorney General: Miscellaneous Application No.85/93** where it **was** held that in matters concerning enforcement of human rights under the Constitution no statutory notice was required because to do so would result in absurdity as the effect of it would be to condemn the violation of the right and deny the applicant the remedy. He argued further that the Rules (under Statutory Instrument 26 of 1992) are specific for the enforcement of the rights which does not require Statutory Notice.

The court held that in matters concerning enforcement of human rights and freedom under the Constitution, no statutory notice would be required as to do so would condemn them to infringement of their rights and freedoms.

The above case is a clear illustration of how courts in Uganda have promoted easy access to environmental justice: See also **The environmental Network Ltd Vs The Attorney General and NEMA H.C. Miscellaneous Application No. 13/2001. J.H. Ntabgoba, PJ (as he then was).**

7. Advocates Coalition for Development and Environment Vs Attorney General. Misc.Application No 100/2004

The Attorney General was sued for allegedly granting Kakira Sugar Works Ltd permit/licence to change land use in Butamira Forest Reserve in violation of the public trust doctrine and without carrying out proper environmental impactassessment. It was held that the alleged granting of permit/licence to Kakira Sugar Works Ltd was illegal for contravening the public trust doctrine and also no environmental impact assessment was carried out contrary to the National Environment Act

<u>Limitations to access to environmental Justice</u>

1. **<u>Cost of Litigation</u>**:

It is a fact that access to justice involves fairness and impartially and that justice should never be a "high horse" inaccessible to the ordinary man. The Courts of Law should be cheap, easy and quick to access. Environmental matters normally involve the interest of very poor people who can hardly afford Court fees and or Lawyers fees. These are people who cannot afford to pay costs of litigation. Being a matter of constitutional importance government should come up with a separate Court fees structures in the interest of sustainable development. The question which is asked is why pay fees for the interest of the public?

2. **Security for costs**:

Since environmental justice is a matter of public interest as it promotes sustainable development how do we consider the issue of security of costs?
Sometime back, a High Court circuit at Nakawa slammed security for costs in the tune of Shs.50 million against **Greenwatch and Advocates Coalition for development in the case of Greenwatch and another Vs. Golf Course Holdings HCCS No. 834/2000**. In that case Greenwatch and Advocates Coalition for development (ACFODE) had sued Golf Course holding of constructing a hotel on a wetland and green areas and of carrying out an illegal Environmental Impact Assessment to justify their development on the plot. The Plaintiffs sought among other things, a permanent injunction to restrain further development on the plot, a declaration that the Environmental Impact Assessment carried out by Golf Course was illegal and a declaration that the said land was a wetland and t hat an environmental restoration order b e issued against the Golf Course holdings. The Learned Counsel for the Defendant applied for security for costs on the ground that the Plaintiffs were likely to loose the case and fail to pay costs since the Defendant had acquired proper lease from Kampala City Council. The Court granted the application but reduced the amount of costs claimed from 300 million to 50 million, which was to be paid within 30 days before the case could take off. One would challenge the above order on two grounds:

(a) Access to justice is a constitutional right especially of the poor. Demanding security for costs would tantamount to shutting them from their rights.
(b) Access to justice is about sustainable development, which demands that one should use his property in a manner, which will not affect others. It is not a question of ownership but a question of sustainable use of property.
Therefore demanding security for costs on such a premise would be watering down the law to protect the environment and sustainable development.

3. Adjudicating capacity:

One of the greatest limitations to access to environmental justice is lack of
technical training in environmental law. Environmental jurisprudence as a green movement is just developing. Most Judges and Lawyers on the bar graduated some decades before environmental law was being offered. Most of them get difficulties in understanding and applying basic principles of environmental law such as sustainable development and other environmental considerations. In most cases they merely get entangled on the common law principles of nuisance, negligence and trespass. There are cases to illustrate the above scenario:

(i) Byabazaire Grace Thaddeus Vs Mukwano Industries Miscellaneous Application No. 90912000 (arising from Civil suit No. 40612000).

The Plaintiff who had a home near the Defendant's factory sued the Defendant claiming that the

defendant's factory was emitting smoke which was obnoxious, poisonous, repelling and a health hazards to the community around and to the plaintiff in particular who was already affected in health. The plaint was struck out on the ground that it did not disclose a cause of action and that the plaintiff did not have locus standi in that matter should only have been taken to Court by NEMA and not by the Plaintiff.

In light of what I have discussed above it is very clear that both the Court and the lawyers involved did not apply the relevant laws properly. The Plaintiff had locus standi under Article 50 of the Constitution. The issue of Locus Standi has now been resolved in the case of Greenwatch **Vs Attorney General** (supra) by Justice Lameck Mukasa.

(ii) Greenwatch (D) Ltd and another Vs Golf Course Holdings (supra).

The brief facts of this case are as set above. The Applicants sought for an injunction but the same was dismissed on the ground that the Applicants had failed to satisfy the condition for the grant of a temporary injunction i.e. proof of prima facie case, proof of irreparable damages and the balance of convenience. The Court held that the Applicants had not proved a prima facie case against the Respondent because the Respondent had land title to the property in question. It is important to note that environmental justice is not about ownership of property but on sustainable use of such property, creating a Constitutional right to health. Therefore the Court should have applied the principle of sustainable development rather than the rigid common law principles mentioned above.

(iii**) Nape Vs AES Nile Power Ltd (supra).**

In that case the Applicant sought an injunction to stop the Respondent from signing a power purchase agreement with Government of Uganda before Environmental Impact Assessment (EIA) was carried out. The injunction was denied. The Court held, rightly in my view, that an Environmental Impact Assessment was required as a guiding environmental regulation model for implementation of certain projects (which included the instant one). The Court further held that it was a Criminal Offence for any person to fail to prepare an EIA contrary to Section 2 0 of the A ct. In denying the injunction t he Learned Judge had this to say:

"Although the Applicant cited the Section and contended that the Respondent is likely to harm the environment he has not prayed for an order to restore the environment. What he has sought is an injunction to stop signing of the agreement and declaration. An injunction of this nature cannot be given in my view since the agreement perse does not alter the environment though the execution thereof places the respondent in a position so as to be able to alter the environment by commencing works. I would conclude here that if this is correct then the order sought relates to matter that by itself is not proximate to environmental damage as such though the signed agreement could be evidence of a reasonable likelihood of possible harm about to be done on the environment".

It is the statutory duty of NEMA to see that the law on sustainable Development is enforced to the last letter. One of the tools for enforcing the same is through EIA. The letter and sprit of the law makes it a Criminal offence for anyone who fails to prepare a proper EIA. Those were the findings of the Court. The Court further found that executing the agreement before EIA could place the Respondent in a position as to be able to alter the environment by commencing works. In light of the

above status quo one would certainly contend that an injunction sought was very proximate to the environmental concerns of the Applicant thereby concluding that the Court did not apply proper principles of environmental law.

(iv) **Buganda Road Cr. Case No. 73512001 Uganda Vs. Ddungu:**

Although Environmental offences by nature appear to be of strict or vicarious liability, the Statutes do not expressly state so. This is likely to cause controversy. A case in point is Uganda Vs Ddungu Buganda Road Cr. Case No. 73512001.

That case involves NEMA and a Company called COIN Ltd. Mr Ddungu was taken to Court as one of the directors of COIN Ltd for constructing a structure on a wetland and failure to carry out a n Environmental improvement order, among other things. Those allegations were supposed to have occurred between March 2000 and January 2001 at COIN Ltd.
The Court found that the alleged crimes had been committed but held that it had not been proved that it was the accused (Ddungu) who had committed the same personally or under his instructions since COIN Ltd had more than one director. However after the acquittal the Court went ahead to make restoration order against the management COIN Ltd on the basis that the Accused was part of the management. There is therefore need for clear predictability of the law.

(v) **Rev. Grace Erisa Sentongo Vs. Yakubu Tanzanza. Nakawa Misc. Application No 8/2003(Lvdia Mugambe Magistrate Grade I)**

The defendant was sued for nuisance in the main suit for constructing abattoir adjacent to the plaintiffs residence at Lweza Zone. The suit was for a declaration that the construction of the abattoir was a violation of right to a clean and healthy environment under article 39 of the constitution. The matter was dismissed on a preliminary objection that Magistrates Court have no jurisdiction to entertain matters brought under article 50 of the constitution. This case will help in streamlining the jurisdiction of the Magistrates Court in environmental cases.

4. Delays:

Another drawback to access to environmental justice is delays of justice. Justice delayed is no doubt justice denied. The Constitution of the Republic of Uganda in Article 126 (2) (b) provides that justice shall not be delayed. Environmental justice ism ore crucial than ordinary justice as it is aimed at protecting human health and the environment for posterity. Environmental jurisprudence in Uganda has shown that our courts are not quick in redressing environmental matters expeditiously. A case in point is Greenwatch (D) Ltd and another Vs Golf course Holdings Ltd (supra).

That case has not been resolved and yet the hotel has now been completed and is now in operation. The case is unlikely to take off in view of an order for security for costs against the Applicants which I have indicated earlier.

5. **Public Participation**:

The Constitution of Uganda provides for public participation in the administration of justice. However in environmental justice, public participation is very poor. This may be due to the fact

that the majority of the citizens are ignorant of their environmental rights. Associated to this is an element of poor leadership. For example the issue of high power tariffs have failed to be resolved and yet parliament had made a resolution to have it reduced.

A greater proportion of our citizenry are also oblivious of environmental damages surrounding them more especially when the damage is caused by intangible processes. For instance when Lt General Tinyefuza raised an issue of noise from a nearby mosque which was affecting his environment very few people showed concern about the damage.

Public participation is a function of access to information which is guaranteed under Article 41 of the Constitution. Access to information is an indicator of transparency and accountability in public affairs. There is a saying that "an ignorant or ill informed or misinformed populace is prone to manipulation or exploitation as it does not know its rights.

Section 85 of the National Environment Act gives freedom of access to environmental information. However, our jurisprudence shows that in certain cases and for unknown reasons Government is not willing to grant its citizen access to information as a Constitutional right. An example is the case of Greenwatch Vs. The Attorney General and Uganda Electricity Distribution Company Ltd (supra).

6. Poor Government policy:

There is contention that Government is interested in attracting investors at the expense of sustainable development and when such investors are challenged they seek protection from the executive. Challenging such investors become a political risk and very few Lawyers would be willing to take up such cases. This may explain the reason why cases of public interest litigation are being persued by very few firms of Advocates.

7. Corruption attributed to the enforcement agencies:

8. Advocates' Act and Law Council:

Access to Environmental Justice is a Constitutional right. This is naturally supported by access to information. Recently however, the Law Council came out with a directive under the Advocates Act stopping Advocates from expressing their opinions publicly on Legal and Constitutional issues. Considering the fact that a right to healthy environment is a fundamental right granted by the Constitution, how tenable is that directive? My personal view is that writing an article on a legal and a Constitutional matter does not constitute touting except that it should not offend the rule of subjudice.

Our citizens should be informed of the Legal and Constitutional issues governing them. I would go by the practice in the United States where Advocates are allowed to advertise and tout for business. After all when I get a poor lawyer I am the one to pay costs. Why is it that the same law does not allow me room for choice?

9. **General fear of Litigation**:

Poor access is also due to the fact that generally people fear litigation for various reasons:-

- lack of resources and familiarity with legal institutions
- lack of knowledge of how to go to Court
- lack of knowledge and trust of remedies available to them. People associate Court with imprisonment

10. Procedural constraints:

Another drawback to access to justice is how a dispute over alleged or threatened degradation may reach a court of justice.

In Uganda like other common law jurisdictions a court is seized with jurisdiction only after a formal pleading in filed. Other jurisdictions have however departed from the above orthodox rule. The best example is the Indian Supreme Court as seen in the case of **SUDIP MAZUNDAR Vs STATE OF MADYA PRADESH (1994) SUPP 2** Supreme Court cases 327.

In that case the court gave an order on the basis of a letter addressed to the Chief Justice by a journalist. In that letter the journalist alleged that the safety precautions in the Indian Army's ammunition test firing range in Madya Pradesh were inadequate, with the result that villagers in the vicinity, who tended to stray into the range, were either killed or injured. After hearing the respondents the court gave an order requiring the state government to take adequate precautions. The court also laid down a time frame within which the order was to be complied with.

In another case of **M.C. Mehta Vs Kamal Nath and others (1996) Supp 10 S.C.R. 12** the court acted in a news item which appeared in a newspaper and stated that "a private motel in which the respondent's family had direct link, had floated a club at the bank of River Beas by encroaching land including substantial forest land which was later regularized and leased out to the company when the respondent was a Minister in the Central Government. It was stated that the motel used bulldozers and earth movers to turn the course of the river. The bulldozers created a new channel by diverting the flow of the river.

According to the news item, three private companies were engaged to reclaim vast tracts of land around the motel. The course of the river was being diverted to save the motel from future floods. The court took notice of the news item because the facts disclosed therein, if true, would be a serious act of environmental degradation on the part of the motel"

In its landmark judgment the court said:

"The Public Trust Doctrine primarily rest on the principle that certain resources like air, sea, waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. They should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes."

Barnabas Samatta, the Chief Justice of Tanzania in his comments on the above cases had this to say:

"There can be no doubt that the dramatic change which the Supreme Court of India has

effected on the manner in which courts may be reached in matters of public interest has considerably widened access to justice in that country. So far, as far as I know, no other jurisdiction has been so radical as that in its approach on access to courts. Should the East African courts follow the importance of protection of natural environment dictate that the question be answered in the affirmative? It is unlikely that there will be unanimity of judicial opinion on the correct answers to these questions."

I want to pose the above questions to the participants. Personally I am of the view that the Indian jurisprudence on access to justice is a better approach.

Another approach would be to adopt the methods applied by lay Magistrates in drafting claims on behalf of litigants. The aim is to move away from Orthodox style of litigation.

11. Courts located far from poor people:

The administration of justice in Uganda was established to strengthen colonial administration. To make it coercive it was established in isolated areas too far from the local people. In most cases one has to travel between 20 - 30 miles in order to access justice. Court location is to that extent a great disincentive to access to justice. This is coupled with abject poverty. Good governance requires that services should be taken nearer to the people. Courts which serve the greatest bulk of our society should therefore be established nearest to the people i.e. the Magistrates' courts.

As for the High Court, efforts have recently been made to increase the number of High Court Circuits by creating new circuits of Arua, Masindi, Soroti and Kabale: See Statutory instruments 2004 No. 20.

However the above efforts should b e supported by manpower. If there are no judges to man those stations their creation would not have much impact.

12. Lack of Judicial activism:

The bench and the bar should break off from Orthodox methods of litigation by being creative in order to realize the dynamic nature of the law. The words of **Dr G.L. Peiris in his book. Towards Equity page 273-274** is pertinent here:

> **"A judge is not there simply to discover a body of rules then to apply those rules mechanically to situations that arise in litigation where he is called upon to adjudicate. There is a creative role for the judge to discharge, in the sense that he must evaluate for himself the rationale of the rules that he is called upon to apply. It is only then that the law becomes a living mechanism, virile, vibrant, productive and of use to the community. Otherwise it becomes arid and sterile."**

As a matter of fact judicial activism is provided in the 1995 Constitution under Article 126(1)

where it is provided that judicial power should be exercised by court is the name of the people and in conformity with law and with values, norms and aspirations of the people. As to how far our courts have lived up to the above expectations is up to the participants to evaluate.

13. Poor funding:

To offer an adequate service you must have the relevant resources. A good judiciary must have a well-equipped library and modem information technology. It must also have a well motivated staff. All these need adequate funding. Without requisite resources, the judiciary is rendered weak. This reminds me of Amini's regime where courts could not sit because of lack of stationery. In fact litigants were required to provide stationery before their causes could move. Lack of adequate funding is therefore a crucial bottleneck to access to justice.

14. Political Will:

For there to be access to justice the public must have confidence in the judiciary. This can only be realized if whatever is done by the judiciary is supported by the executive at least constructively. There must not be armstwisting between the three arms of Government.

All should support and compliment each.

15. Enforcement constraints:

There is no doubt that some of the environmental legislations are very difficult to enforce. For instance I see a lot of difficulties in enforcing a ban on smoking in public places. For instance how easy is it to enforce non-smoking in sports stadia and cinema and theatrical halls? Those places should have been restricted places but not prohibited places. The same should have been with airports and airfields. They should have been made restricted places for smoking.

Other enforcement constraints relate to lack of staff and resources to enhance sound environmental management at national and district level.

16. Other limitations:

These include unfriendly court environment, Lack of understanding of language of the law and court procedure by the majority of court users.

ROAD MAP

1. Open up to allow advocates to speak freely and express their views on legal land Constitution matters on behalf of the disadvantaged ormarginalized groups.
2. Our development partners like TEAN, Greenwatch, NAPE, NEMA, ACODE, ELI and UNEP are doing a lot of support in capacity building. These organizations have committed their resources in training lawyers and judicial officers. Some of them are also doing public litigation cases as a service to the nation.

3. Need for constant training for the bench and the bar.
4. The need to create environmental and human rights department of the High court. A leaf can be borrowed from India which has developed a special "Green Bench" following the case of **VELLORE CITIZEN'S WELFARE.**

5. There is need to publicize and circulate environmental case laws and materials. Prof. Okidi, John Ntabirweki, UNEP, ELI, ACFODE, NEMA and their officers should be commended for their contributions in terms of books and other resource materials on environmental law.
6. Possibility of creating environmental tribunals.
7. The need for judicial activism.
8. Explore the possibility of making environmental education gain foundation from primary up to tertiary institutions. The same should be made compulsory in law schools.
9. All the environment enforcement agents and friends should be effectively supported and strengthened.
10. There must be political will in support of environmental protection. Government must be transparent and accountable in all matters concerning sustainable development.
11. Access to environmental justice should be incorporated in chainlink initiative to create public awareness and accountability.
12. Substantive justice should be the basis rather than technicalities.

    Courts should administer substantial and sustainable justice, justice which can stand the test of time like the case of Donoghue Vs. Stevenson
13. Need for an effective, efficient and independent Judiciary which is well informed of environmental issues. The Judiciary and its members must be well funded and motivated with adequate remuneration otherwise their conscience would be compromised. The adage that whoever controls your subsistence also controls your conscience is not a recent truth. Equally important is that the method of recruitment to the Judiciary should not leave room for the

appointment of officers who would be sympathetic to the political agenda of the day. I would say that the current system of an independent Judicial service commission and Parliamentary approval appears to satisfy the above goal.

Conclusion

Character, Sir Thomas More in Robert Bolt's A **MAN FOR ALL SEASONS** had this to say: *in the thickets of the law, I am a forester.* It is my sincere hope that after this workshop you will become foresters in the thickets of environmental law and practice

Thank you.

HON. MR JUSTICE RUBBY A WERI OPIO

ANNEX 7

PUBLIC INTEREST LITIGATION IN UGANDA
BY: MR. PHILLIP KARUGABA, TEAN.

PRACTICE AND PROCEDURE

PITFALLS & LANDMARKS[1]

> *"And what is the argument for the other side? Only this that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before we shall never get anywhere. The law will stand still while the rest of the world goes on and that will be bad for both"*
>
> **Lord Denning PACKER-V-PACKER**
> [1953] 2 AER 127 @ 129

A. INTRODUCTION.

Public interest litigation describes legal actions brought to protect or enforce rights enjoyed by members of the public or large parts of it. It has been used as a tool of great social change in India, Pakistan, Bangladesh and the Philippines on such diverse issues as the environment, health and land issues.

According to **BHAGWATI J in BANDHUA MUKTI MORCHA-V-UNION OF INDIA AIR 1984 S.C;**

> *"Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice, which is the signature tune of our Constitution* ".[1]

In Australia, the criteria used by the Public Interest Law Clearing House (Vic) Inc. and the Public Interest Law Clearing House Inc. (NSW) to determine public interest cases to support are;

The matter must require a legal remedy and be of public interest which means it must;

a) affect a significant number of people not just the individual or;

b) raise matters of broad public concern or;

c) impact on disadvantaged or marginalized group, and

[1] Originally presented to the Judges Training Workshop at Jinja Nile Resort 10th September 2003 NARAYAMA: Public Interest Litigation [2nd Edn 2001]

d) it must be a legal matter which requires addressing *pro bono publico* ('for the common good')[2]

In Uganda, public interest litigation it is yet to come of age. Some examples of public interest litigation are the Rwanyarare petitions in the Constitutional Court in respect of political rights; Uganda Law Society petitions on the Referendum Act; execution of death penalty sentences by field court martial without affording a right of appeal the constitutional petition by FIDA and some men on the Divorce Act; Greenwatch actions; (Butamira, AES access to information, Golf Course development (now Garden City), curry powder, kaveera case), petition on freedom to worship by seventh day Adventists, TEAN actions on smoking in public places and on stronger warning labels for tobacco.

"The harvest is plentiful but the labourers are few". Many more issues abound all bedded in the Constitution but hot with controversy for example; issues of torture of suspects, arrest of persons released by the courts, death penalty, street vendors' rights, pornography, prostitution.
As you will see from the list, public interest litigation attracts a lot of attention and for this reason is often wrongly called *"publicity interest litigation"*. But the media are an important and indispensable ally in any battle for societal rights.

Public interest litigation is a new tool in the arsenal of civil society. It presents a strategic opportunity to engage the Judiciary in ordinary societal issues. It would allow civil society organizations to jump from conferences tables and lamentations to strategic, decisive and enforceable action.

The attempts at public interest litigation in Uganda have been beset with technicalities, which we propose to discuss below in a humble attempt to bring clarity to this area of the law and by so doing, promote a culture of constitutionalism, of human rights enforcement and the Rule of Law.

B. THE ENABLING LAW;

The bedrock of public interest litigation lies in Article 50(2) of the Constitution. It provides:

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

Its simple language belies the problems that have beset its application. It is set against the backdrop of Article 50(1), which provides for the enforcement of individual constitutional rights. In the words of the President of the Law Society (as he then was) Mr. Andrew Kasirye, this provision makes us *"our brother's keeper"*[3] By using an

[2] PENNY MARTIN Defining and refining the concept of practicing in the public interest [Alternative Law Journal Vol. 28 Number 1 February 2003 PA]

[3] Opening speech at Regional Workshop on Tobacco: "The Role of Civil Society

expression *"any person"* instead of say *"an aggrieved person..."* it allows any individual or organization to protect the rights of another even though that individual is not suffering the injury complained of. Whenever there is an injury caused by any act/omission contrary to the Constitution, any member of the public acting bonafide can bring an action for redress of such wrong.

Another avenue to public interest litigation lies in Article 137(2), which allows any person who alleges a violation of the Constitution to have taken place to petition the Constitutional Court. Such a violation may stem from an act or omission of a person/organization or from an Act of Parliament being inconsistent with the Constitution. The article provides;

> *3)* "A *person who alleges that: -*
>
> *a) an Act of Parliament or any other law or anything in or done under the authority of any law; or any act or omission by any person or authority,*
>
> *b) is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.* "

Justice Mulenga JSC in **ISMAIL SERUGO-V-KCC & ATTORNEY GENERAL** [Constitutional Appeal No.2 of 1998] was emphatic that the right to present a constitutional petition was vested not only in the person who suffered the injury but also in any other person.

This is particularly pertinent since Article 3(4) of the Constitution imposes on every citizen of Uganda a right and duty at all times to defend the Constitution.

Also worthy of mention is S.72 of the National Environment Statute 1995 that empowers any person to apply for an environmental restoration order even though such person is not suffering any harm and has no interest in the land in use.

There is also a now probably archaic S. 63(1) of the Civil Procedure Act (Cap. 65), which requires that suits for a public nuisance by maybe instituted by the Attorney General or two or more persons with the consent of the Attorney General.

We will move to a consideration of some of the issues that have beset public interest litigation.

C. PROCEDURE IN PUBLIC INTEREST LITIGATION

1. General

Organisations in the development of Tobacco Control Legislation 18-20 August 2002.

We will focus here on procedure under Article 50, first. It presents a classic case of needing to know where one is coming from to know where one is going. The procedure of enforcement of the rights under the 1967 Constitution was only put in place in 1992 under the Fundamental Human Rights (Enforcement Procedure) Rules S.I No. 26 of 1992.

What has given rise to much confusion here is the dicta in the case of **UGANDA JOURNALISTS SAFETY COMMITTEE-V-ATTORNEY GENERAL** [Constitutional Petition No.7 of 1997] in which the Supreme Court bought the Attorney General's argument that no rules had made for the enforcement of Article 50.

This has been further compounded by the High Court ruling in **JANE FRANCIS AMAMO- V-ATTORNEY GENERAL** [Misc. Application No. 317 of 2002 arising from H.C.C.S No. 843 of 2001] in which the learned trial Judge said in dismissing an action under Article 50,

> *"The Constitution clearly and in no uncertain words said Parliament was to make laws for the enforcement of the rights and freedoms under the said Constitution. In my humble opinion this means that Courts can no longer apply the Rules passed in* 1992. *That would mean to me that until Parliament makes laws under Article 50(4), Article 50(1) is in abeyance."*

As fact that would be correct that no rules have been made under Article 50(4) of the Constitution. However Article 273 when read with the Judicature Statute 1996 and the 1992 Rules goes to supply the omission. The 1992 Rules were saved under the 1996 Judicature Statute and must continue to apply as existing law subject to Article 273. The 1992 Rules must be read with such modifications as to bring them into compliance with the 1995 Constitution.

Aside from the fact that **AMAMO** was wrongly decided, it was said that the Court was turning away a citizen, who was complaining of a violation of his fundamental rights, on basis of lack of procedure. The **AMAMO** decision contrasts rather sharply with the approach of the Tanzanian Courts when faced with actions to enforce human rights before the relevant rules were made. In **CHUMCHA MARWA-V - OFFICERI/MUSOMA PRISON** [Misc. Crim Case No.2 of 1988] (MWANZA) Justice Mwalusanya ruled that since the Articles provided that Government "may" enact such rules, then it was not a must that the rules were enacted prior to the enforcement of the Bill of Rights.[4]
The Tanzanian Court of Appeal took the same position in **DPP- V -DAUDI PETE** [1991] LRC (Const) stating that until Parliament passed the relevant legislation the enforcement of the basic rights, freedoms and duties may be effected under the procedure

[4] Cited in JUSTICE KAHWA LUKAKINGIRA: The Judiciary and the interpretation of Tanzania's Constitution: Problems and Prospects [East African journal of Peace and Human Rights Vol. 7 1 2001 p.l]

that is available in the High Court in the exercise of its original jurisdiction, depending on the nature of the remedy sought.[5]
This certainly appears to be the more deserving approach, as every effort should be made to give effect to the Constitutional protections and fundamental human rights enshrined in the Constitution, as the supreme law of the land.

It is most strange that the Rules Committee made all the other rules prescribed in S.51 (2) of the Judicature Statute 1996, being Supreme. Court Rules, Court of Appeals Rules, Constitutional Court Rules but fell just short in making new rules for the enforcement of fundamental human rights.

Hitherto the High Court has had no difficulty in hearing Article 50 applications. In **NATIONAL ASSOCIATION OF PROFESSIONAL ENVIRONMENTALISTS-V-AES NILE POWER LTD** [Misc. Application No. 268 of 1999] probably the first action under Article 50, Court was quite clear that the correct procedure for the Plaintiffs to have followed in that case was by notice of motion as prescribed under the 1992 Rules.

TEAN-V-ATTORNEY GENERAL AND NEMA [Misc. Application No. 39 of 2001], [Non-Smokers rights case] and **TEAN-V-B.A.T** [Misc. Application No. of 2002] (warning labels), **PASTOR MARTIN SEMPA-V-ATTORNEY GENERAL** [Misc. Application No. 71 of 2002] (on Electricity tariffs**), GREENWATCH-V-ATTORNEY GENERAL** [Misc. Application No. 140 of 2002] (the Kaveera suit) the Judges had no problem in applying the 1992 Rules. It therefore appears and is certainly hoped that the **AMAMO** line of decisions will remain isolated.

Under the 1992 Rules, the procedure is by notice of motion and affidavit filed in the High Court. [A word of caution in reading the Rules. The bound copies of the Laws of Uganda issued by the Supreme Court wrongly bound up S.L 25 and 26. It is best to refer to the original statutory instruments. Both instruments deal with similar subject matter and with a similar number of sections. S.I 25 of 1992 is Interpretation of the Constitution (procedure) Rules 1992; which was replaced by LN. No.3 of 1996, The Interpretation of the Constitution (Procedure) Rules 1992 (Modification) Directions 1996.

With respect to Article 137(3) petitions to the Constitutional Court, the procedure is governed by legal Notice No.4 of 1996 Rules of the Constitutional Court (petitions for Declarations under Article 137 of the Constitution) Directions 1996. These Rules were made under S.51 (2)(c) of the Judicature Statute 1996.

An important note is that to proceed under Article 50, the matter must relate directly to a fundamental human right in the Constitution. **PASTOR MARTIN SEMPA's** action (Supra) was brought to object to new electricity tariffs that had been imposed without giving the members of the public a hearing and that accordingly the Applicant's right to fair treatment under Article 42 of the Constitution. The Learned Trial Judge struck out the action on the ground that it did not disclose violation of a Constitutional right. He

[5] Ibid

ruled

> *"It is not enough to assert the existence of a right. The facts set out in the pleadings must bear out the existence of such a right and its breach would give rise to relief."*

Similarly in AMAMO (supra), the Trial Judge was of the view that Article 50 was not suitable for actions for wrongful dismissal.

2. Competent Court

Article 50 prescribes the forum for enforcement of human rights actions as a "competent court" The expression is not defined. However the 1992 Rules state that the application shall be filed in the High Court.

For Article 137 actions the correct forum is the Constitutional Court. However the challenge always arises in determining whether the action should be under Article 50 or Article 137.

WAMBUZI CJ(as he was then) in **ATTORNEY GENERAL-V-DAVID TINYEFUZA** [Constitutional Appeal No.1 of 1997] said;

> *"In my view, jurisdiction of the Constitutional Court is limited in Article* 137(1) *of the Constitution. Put in a different way no other jurisdiction apart from interpretation of the Constitution is given. In these circumstances I would hold that unless the question before the Constitutional Court depends for its determination on the interpretation or construction of a provision of the Constitution, the Constitutional Court has no jurisdiction"*

In the case of **ISMAIL SERUGO -V-KCC & A.G** [Constitutional Appeal No.2 of 1998] the Court ruled that in the course of handling Article 137 matters the Constitutional Court could deal with Article 50 matters. However unless the action requires interpretation of the Constitution, the Court of first instance should be the High Court

This use of the word "interpretation" in the mandate of the Constitutional Court prescribed in Article 137(1) of the Constitution has given rise to some difficulty. Actions have been dismissed in the Constitutional Court on the grounds that the requisite remedy is not Article 137 interpretation but Article 50 enforcement.

In **ALENYO-V-THE ATTORNEY GENERAL** [Constitutional Petition No.5 of 2002] the Court considered the word "interpretation"

> *"The Constitution does not define the word "interpretation". However Article* 137(3) *gives a clear indication of what the word means...*
>
> *"We hold the view that the allegations made to the Constitutional Court, if they are in conformity with Article* 137(3), *give rise to the interpretation of the*

Constitution and the Court has jurisdiction to entertain them...

In the instant petition, the petitioner alleges that the Law Council is guilty of commissions or omissions which are inconsistent with or in contravention of the Constitution. He has petitioned this Court for a declaration to that effect. In our judgment these are the types of actions envisaged by Article 137(3)(b). He is not stating as a fact that he has a definite right that should be enforced. He is alleging that the conduct of the Law Council has violated his rights guaranteed by specified provisions of the Constitution and this Court should so declare. In order to do that the Court must determine the meaning of the specified provisions of the Constitution allegedly violated and whether the conduct complained of has actually violated those provisions. The carrying out of the exercise by the Court is an interpretation of the Constitution. It is not an enforcement of rights and freedoms. The Court is being called upon to interpret the Constitution. It can make a declaration and stop there or it can grant redress if appropriate. Whether the alleged acts and omissions of the Law Council contravene or are inconsistent with the Constitution is not relevant to the issue of jurisdiction. It is what the Court is called upon to investigate and determine after it has assumed jurisdiction. It is not relevant either that there is a remedy available to the petitioner elsewhere. That alone cannot deprive the Court of the jurisdiction specifically conferred on it by Article 137

WAMBUZI CJ said in **SERUGO** (supra) that;

"In my view for the Constitutional Court to have jurisdiction the petition must show on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a constitutional provision has been violated. If therefore any rights have been violated as claimed, they are enforceable under Article 50 of the Constitution by another court"

The position was turned on its head by Justice **KANYEIHAMBA in TINYEFUZA** and despite its length, its is most instructive to set it out in extenso;

"The marginal note to Article 137 *states that it is an article which deals with questions relating to the interpretation of the constitution. In my opinion, there is a big difference between applying and enforcing the provisions of the constitution and interpreting it. Whereas any court of law and tribunals with competent jurisdictions may be moved by litigants in ordinary suits, applications or motions to hear complaints and determine the rights and freedoms enshrined in the Constitution and other laws, under Article* 137 *only the Court of Appeal sitting as the Constitutional Court may be petitioned to interpret the Constitution with a right of appeal to this Court as the appellate Court of last resort.*

Under the Uganda Constitution, courts and tribunals have jurisdictions to hear and determine disputes arising from the application of such articles as 20, 23, 26, 28, 31,32, 35, 42, 44, 45, *50,* 52, 53, 67, 84, *107,* 118 *and generally under chapter*

8 *of the Constitution. In my opinion, Article* 137(1) *and* 137(3) *are not mutually exclusive. I do believe that the jurisdiction of the Constitutional Court as derived from Article* 137(3) *is concurrent with the jurisdiction of those other courts which may apply and enforce the articles enumerated above, but there is an important distinction that I see and that* is *that for the Constitutional Court to claim and exercise the concurrent jurisdiction, the validity of that claim and the exercise of the jurisdiction must be derived from either a petition or reference to have the Constitution or one of its provisions interpreted or construed by the Constitutional Court. In other words, the concurrent original jurisdiction of the Court of Appeal sitting as a Constitutional Court can only arise and be exercised if the petition also raises question as to the interpretation or construction of the constitution as the primary objective or objectives of the petition. To hold otherwise might lead to injustice and,* in *some situations, manifest absurdity.*

Take the case of a pupil who comes late in *a primary school. The teacher imposes a punishment upon the pupil who* is *required to clean the classroom after school hours. Can it have been the intention of the framers of the Constitution that as an alternative to the pupil's right to complain and seek redress from the head teacher of the school board of governors, the pupil would be entitled to petition the Constitutional Court under Article 137(3)(b) on the grounds that his rights under Article* 25(3) *have been violated* in *that he or she has been compelled to do "forced labour"?* A *prison officer opens and reads a sealed letter addressed to one of the inmates suspecting that the letter contains secret information advising the prisoner how to escape from jail.*

Would it be reasonable for the prisoner to petition the Constitutional Court on the grounds that the opening of his mail was inconsistent with Article 27(2) *of the Uganda Constitution which provides that no person shall be subject to interference with the privacy of that person's home, correspondence, communication or other property or should the prisoner complain to the Minister of State responsible for prisons?*

A resident in *suburbia* is *constantly awakened from sleep by the loud noise from a disco nearby. Should the resident petition the Constitutional Court under Article* 43(1) *on the ground that the enjoyment of music by musicians and dancers has directly interfered with the right of quiet and peaceful enjoyment of the property? Or should the resident be advised to go to the local government council for possible reconciliation and redress? In my opinion, it could not have been the intention of the framers of the Uganda Constitution that such matters inconsistent as they may appear with the provisions of the Constitution would have direct access to the Court of Appeal which happens to be one the busiest courts* in *the land, entertaining appeals from other diverse courts and judges.*

This Court must give guidelines on these matters by construing the Constitution so as to avoid these absurdities and so direct such suits and claims to lower tribunals, magistrates' courts and, where appropriate to the High Court.

It is to be noted that the Constitutional Court consists of not less that five senior judges of the Court of Appeal. The Court hears many appeals involving grave and important issues of public importance. It cannot have been in the contemplation of the makers of the Constitution for the present or the future that in the event of such small claims going direct to the Court of Appeal as a Constitutional Court, the Court of Appeal should be in a position of deciding whether or not to abandon appeals involving death sentences, treason and gross violations of other human rights originating from the High Court and entering the Court of Appeal by way of ordinary procedure in order first to resolve those trivial matters arising from allegations that they are inconsistent with the provisions of the Constitution under Article 137(3) *and* (7).

Therefore it is my opinion that while the Constitutional Court would have jurisdiction to hear and determine the petition, in exercising that jurisdiction in this case it exceeded its powers by taking into consideration and determining matters not contemplated under Article 137. *I do not believe that the Constitutional Court was correct in accepting the arguments that Article* 97 *of the Constitution which is merely an enabling Article had been violated when in fact the only relevant law which needs to be considered and taken into 0 account were the Acts of Parliament and other laws in which the immunities and privilege contemplated by that article are clearly defined, described and limited. Article* 97 *does not, by itself create any immunities or privileges for which the respondent could have taken advantage of It merely directs Parliament to create, define and describe them.* "

D. <u>THE DISABLING LAW</u>

By *"disabling law"* we refer to that body of jurisprudence that has arisen from the preliminary objections raised by the Attorney General and other respondents to have actions struck out.

We set the objections in quotations in the popular form in which they are raised and we seek to discuss the relevant cases and provide some answers to the objections. Hopefully what was a shipwreck for those who went before will become a seamark for those to come.

1. ***"The applicant has no locus standi to bring this action"***

This has been raised severally in Article 50 proceedings

The Constitutional Court in **RWANYARARE-V-ATTORNEY GENERAL** [Constitutional Petition No. 11 of 1997] found it difficult to accept that an action could be brought on behalf of an unnamed group of persons. **Justice Manyindo DCJ** (then) ruled that the implications on costs and the doctrine of res judicata would be too great.

To quote the Learned Judge;

"We cannot accept the argument of Mr. Walubiri that any spirited person can represent any group of persons without their knowledge or consent. That would be undemocratic and could have far reaching consequences. For example ... how would the Respondent recover costs from the unknown group called Uganda Peoples' Congress? What if other members of Uganda Peoples'
Congress chose to bring a similar petition against the Respondent, would the matter have been foreclosed against them on the grounds of res judicata. "

The petitioners in that case sued on behalf of the members of Uganda Peoples' Congress (UPC) alleging that their political rights had been infringed. The action was brought before the Constitutional Court under Articles 50 and 137 and the Court went on to hold that it could not be brought on behalf of unnamed persons.

The question arose again in the Non-Smokers rights case. This was an action brought on behalf of non-smokers for declarations that smoking in public places violated the non-smokers constitutional rights to a clean and healthy environment and to life. It went without saying that all the nonsmokers in Uganda could not be and were not named in the motion.

The Attorney General raised the objection that the action was not maintainable on the basis of the **RWANYARARE** decision.

The Court overruled the objection and found that in public interest litigation there was no requirement for *locus standi.* The Court relied on the English decision of **IRC-V-EXP. FEDERATION OF SELF EMPLOYED** [1982] AC 643 and the Tanzanian decision of REV. **MTIKILA-V-ATTORNEY GENERAL** [H.C.C.S No.5 of 1993] The Court further ruled that the interest of public rights and freedoms transcend technicalities, especially as to the rules of the procedure leading to the protection of such rights and freedoms. The Judge ruled that it was compelling that the Applicant would stand up for the rights and freedoms of others and he would accordingly grant them a hearing.

In **MTIKILA**, (supra) the Tanzanian Court relied on a similar provision in the Constitution which enabled citizens to bring actions in defence of the Constitution. The Court found that this provision vested citizens with both a personal and a communitarian capacity. The Court further justified public interest litigation based on the prevailing socio-economic conditions; the low literacy level, financial disablement and the culture of apathy and silence deriving from years of ideological conditioning. To the Court this justified any public-spirited individual taking on the burden of the community and it would be contrary to the Constitution to deny him or her standing.[6]

This reasoning was echoed again in **B.A.T LTD-V-TEAN** [Misc. Application No. 27 of 2003 Arising from Misc. Application No. 70 of 2002] where the trial Judge overruled an objection by the Applicant who sought to say that since the words "public interest" did not appear in our Constitution as they did expressly in the South African Constitution

[6] LUGAKINGIRA (Ibid)

then public interest litigation was prohibited. The learned Judge stated;

> *"It is elementary that "person", "organizations" and "groups of persons" can be read into Article 50(2) of the Constitution to include "public interest litigants" as well as all the litigants listed down in (a) to (e) of the South African Constitution. In fact the only difference between the South African provisions (i.e. Section* 38) *and our provision (under Article 50(2) is that the former is detailed and the latter is not. That is my considered view based on the reality that there are in our society, persons and groups of persons whose interest is not the same as the interest of those who Lord Diplock referred to as "spirited" persons or groups of persons who may feel obliged to represent them i.e. those person or groups of persons acting in the public interest. To say that our Constitution does not recognize the existence of needy and oppressed persons and therefore cannot allow actions of public interest groups to be brought on their behalf is to demean the Constitution"*

Unfortunately no reference was made to the RWANYARARE decision in the ruling and the Attorney General's application for leave to appeal on this point was struck out as being out of time.

Locus standi in the context of actions to enforce environmental rights also holds some potential issues. As we have see from the treatment of Article 50, it entitles any person to enforce any of the constitutional rights including the right to a clean and healthy environment (Article 39)

Article 17(j) of the Constitution makes it the duty of every citizen, including members of the Bench, to create and protect a clean and healthy environment.

In **BYABAZAIRE THADEUS-V-MUKWANO INDUSTRIES** [H.C.C.S No. 466 of 2000] It was held that it was only the National Environment Management Authority (NEMA) that could bring an environmental action, based on the provisions of S.4 of the National Environmental Statute 1995

It is submitted that a purposive reading of the Constitution read with the National Environment Statute 1995 should open the gates to all citizens seeking to do their duty in protecting the environment.

2. ***" The applicant failed to comply with O.1r.8 procedure for bringing representative suits"***

O.Ir.8 CPR provides
"where there are numerous persons <u>having the same interest</u> in one suit, one or more of such persons may with the permission of the Court, sue or be sued, or may defend in such suit on behalf of or for the benefit of all persons so interested".

This is the basis for representative suits, where all parties have the same interest and therein lies the distinction between representative actions and public interest litigation.

The issue arose in the Non-Smokers rights case where it was contended that **TEAN** did not have the authority of the non-smokers in Uganda to bring an action on their behalf. It was contended that **TEAN** should have first sought an order under O.Ir.8 CPR to bring the action.

The Court found O.Ir.8 inapplicable in so much as the Applicant, did not have the same interest as the non-smokers on whose behalf the action was being brought. The requirement of having the same interest is key to the application of O.Ir.8 while there is no such requirement in Article 50.

The issue arose again in **BRITISH AMERICAN TOBACCO UGANDA LTD-V-TEAN** [Misc. Application No. 70 of 2002]. The Court dealt with the RW ANY ARARE case on the point of whether one could sue for unnamed other persons without their authority and properly distinguished it.

The learned Judge stated;

> *"I do not agree at all with Counsel's argument that no distinction can be drawn between these groups of persons and the group of persons represented or purported to be represented by Dr. Rwanyarare and others in Constitutional Petition No.* 11 *of 1997.*
>
> *The distinction is quite obvious; Dr. Rwanyarare and another were representing the group described in the application or "specific and identifiable existing persons or groups". Such group is the one referred to as Uganda Peoples Congress. With due respect to the Constitutional Court [they) cannot have been talking about the type of persons of persons I have referred to above namely; the children, the disabled and the illiterates. These are persons who cannot be served under 01r.8 CPR, the reasons being they are not easily identifiable; they cannot be served as they would have no capacity to respond with a view to requesting to be joined in the action and they have no similar interest with those who represent them. To say that either these people are lumped together with the members of Rwanyarare's interest or that they do not fall under the Constitution in Article 50(2) of the Constitution is to belittle the foresight of the framers of the Constitution.* "

Later in the judgment

> *"Dr. Rwanyarare and another had similar interest with fellow UPC members. They could therefore sue on behalf of the fellow members of UPC and actually and logically O.ir.8 CPR should apply. The same should apply to members of a football club, of a golf club or of a trade union. But the question is can the rule apply to groups of people who because of inability or incapability engendered by say ignorance, poverty, illiteracy, etc cannot sue or be sued or defend a suit for*

the simple reasons that apart from being indigent, they cannot even identify their rights or their violations. These are the groups who badly need the services of "public interest groups" like TEAN to bring action on their behalf under what in paragraph 38(d) of the South African Constitution is referred to as "public interest persons" but who have no similar interest on the action with those they represent.

It cannot be denied that such group of persons abound in our society and we cannot hide our heads in the sand by saying that the' Constitution does not expressly mention them and therefore they must be excluded from the Constitutional provision regarding recourse to remedies when rights are violated. It is to be remembered that such groups cannot be served either directly or indirectly. They have neither postal address nor telephones. Their fate depends entirely on the public interest litigation groups or persons and they are not personally identifiable; yet they exist and can be identified only as a group or groups.

The Constitution cannot escape from authorizing representative action without interest sharing with those who represent them. That is why Article 273 *of the Constitution becomes handy because the rules of procedure [O.1r.8] are in this respect, rendered inoperable by the Constitution. Needless to say that it would be illogical to argue that actions brought b such persons or groups of persons for the redress of the violation of their inalienable rights should be governed by the procedure under O.ir.8CPR. The procedure cannot govern them simply because they do not share the concerns of violating their rights with those who bring action on their behalf.* "

A subsequent case, the Kaveera suit (supra) also followed the reasoning in the Non-Smokers case on distinguishing representative suits from public interest litigation.

There is a strategic reason for using such "an outsider" in public interest litigation as opposed to representative suits in some matters. In the case of **SIRAJI WAISWA-V-KAKIRA SUGAR**, [H.C.C.S No. 69 of 2001] the Plaintiffs brought an O.1r.8 representative action to restrain the Defendants from depriving them of their woodlots in the Butamira Forest.

The Court ruled that the suit was effectively and fully withdrawn by the lead Plaintiff when he signed a notice of withdrawal, even though he did so improperly without the full consent of the parties he was representing. The situation was remedied by the woodlot farmers filling a fresh suit and having all of them remain as independent plaintiffs.

If however the civil society groups that backed the woodlot farmers had in the first place, brought the action themselves on behalf of the woodlot farmers, this could have been avoided and it is submitted, the trial would have proceeded much faster.

3. ***"The applicant did not give statutory notice"***

This refers to the requirement under the Civil Procedure (Limitation and Miscellaneous Provisions) Act 1967 as amended that a 45-day notice be issued before commencing any proceedings against the Government, or any scheduled corporation.

This was another ground of objection in the Non-Smoker's rights case. Fortunately the matter had already been adequately laid to rest in the previous decisions of **RWANYARARE -V-ATTORNEY GENERAL** [Misc. Application No. 85 of 1993] and **OKECHO-V-ATTORNEY GENERAL**. [Misc. Application No. 124 of 1999].

In the **RWANYARARE**, (1993) (supra) Court considering the equivalent Article of the 1967 Constitution and The Fundamental Rights and Freedoms (Enforcement Procedure) Rules 1992, found that the Civil Procedure (Limitation and Miscellaneous Provisions) Act 1967 did not apply to actions to enforce human rights. The Learned Judge found that it would be incompatible with human rights enforcement.

4. *"The matter is Res Judicata"*

Certainly it would appear from the wording of S.7 Civil Procedure Act (Cap.65) that the doctrine of Res Judicata therein prescribed, does apply. The doctrine provides that once a matter has been heard and determined by a competent court, it cannot be tried again. Explanatory note no. 6 under this section, provides that

> *"where persons litigate bonafide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall for the purposes of this section be deemed to claim under the person so litigating"*

It is however suggested that the construction would be stretching the interpretation of the section to cover a form of action not anticipated by nor created by the Civil Procedure Act (Cap. 65). Public interest litigation is a creature of the 1995 Constitution and it cannot be limited by earlier Act that is premised on requirements of *locus standi.*

However attractive that argument may be the practical problem arose in **HON. NORBERT MAO-V-ATTORNEY GENERAL** [Constitutional Petition No.1 of 2002]. In that case, the Petitioner brought the action on behalf of 21 persons from his constituency for declarations under Article 137 and for redress under Article 50, arising from an incident in which UPDF officers attacked a prison and forcibly took away 20 prisoners and killed one in the process.

Unknown to the petitioner another action had been filed and had proceeded to judgment. **HON. RONALD REGAN OKUMU-V-ATTORNEY GENERAL** [Misc. Application No. 0063 of 2002] had been filed in the High Court of Gulu under Article 50 seeking similar reliefs.

The Constitutional Court dismissed the petition on the plea of res judicata and in accordance with that doctrine, ignored the petitioner's pleas that there were important

constitutional declarations sought that had not been and could not be addressed in the lower court. The doctrine of Res Judicata, allows a litigant only one bite. It prevents a litigant, or persons claiming under the same title from coming back to court to claim further reliefs not claimed in the earlier action. Accordingly Hon Mao, like the Dickensenian character Oliver Twist, could not ask for more.

5. ***A respondent?***

The 1992 Rules require that the Attorney General be served. It is not the same thing as requiring that he be named as a party. In considering similar provisions under Article 137, in **SERUGO** (supra) the Court ruled that a petition could be made exparte, although the Attorney General could be joined at the instance of the Court.

The Constitutional Court has power to entertain a petition that does not name a respondent but may of its own motion join the Attorney General.
Lack of a respondent does not in itself make the petition incompetent**.[DR.JAMES RWANYARARE & BADRU WEGULO- V-ATTORNEY GENERAL** (Constitutional Appeal No.1 of 1999) **PAULO SSEMWOGERE-V-ATTORNEY GENERAL** (Constitutional Appeal No.1 of2000)]

In **ZACHARY OLUM & JULIE RAINER KAFIRE** [Constitutional Petition No.6 of 1999] the Court took issue with the Attorney General raising a preliminary objection that the petition did not show any liability of Government and that consequently the petition did not disclose a cause of action against the Attorney General. Court followed earlier decisions of **SSEMWOGERERE & OLUM-V-ATTORNEY GENERAL** and **RWANYARARE & ANOTHER** [Constitutional Petition No.5 of 1999], which held that in matters of great public interest, the Attorney General should be made a party even by Court on its own motion. Court therefore found it remarkable that the Attorney General would seek to be struck out of a petition seeking to strike down a provision of law concerning an important organ of state.

In **B.A.T –V- TEAN** an attempt was made to argue that a private orgarnisation cannot be named as a respondent m an action for enforcement of human rights. It was argued that as between private citizens only municipal law could be enforced. The premise for this is the theory of vertical versus horizontal application of the Constitution that the Constitution applies as between citizen and state and not as between private citizens.

Unfortunately the point was not addressed. It however seems settled by Article 20(1), which provides that all shall be bound by the Constitution.

As was stated in **SARAH LONGWE** this would be tantamount to saying that a private organisation.

6. ***"There is no cause of action"***

This argument arises from the fact that there is no liability in the usual sense on the part of the Attorney General for say an Act of Parliament breaching the Constitution. In this light, judged by the ordinary standards for disclosure of a cause of action", there would be none.

However the subtle distinction was made in **SERUGO** (supra), by Mulenga JSC between a cause of action in an ordinary civil suit and a cause of action in a constitutional petition. He stated;

> *"A petition brought under this provision (Article* 137), *in my opinion sufficiently discloses a cause of action, if it describes the act or omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent with or which is alleged to have been contravened by the Act or omission and prays for a declaration to that effect. It seems to me therefore that a cause of action in tort or contract as described in* **AUTO GARAGE-V-MOTOKOV.** *Thus apart from the drafting requirement introduced through the Rules under Legal Notice No.4 of* 1996, *that the Petitioner be described as "aggrieved" it is not an essential element for the petitioner's right to have been violated by the alleged inconsistency or contravention*."

7. *"The affidavit in support is defective leaving the application without evidence"*

In **CHARLES MUBIRU-V-ATTORNEY GENERAL** [Constitutional Petition No.1 of 2001] the petitioner contended that the statutory law relating to the grant of bail were unconstitutional. The petitioner was released on bail before the determination of the petition and it was accordingly withdrawn. The Court however chose to deliver a ruling on preliminary objections raised earlier one of which was an objection to the affidavit in support of the petition.

It was contended that the affidavit in support of the petition offended O.17r.3 (1) CPR which provides that save in interlocutory applications, an affidavit must be restricted to such facts as the deponent is of his own knowledge able to prove. It was argued that the affidavit was therefore defective since it included matters on information and belief.

The Court ruled that the affidavit offended O.17r.3 (I) and was therefore defective and ordered it to struck out. The Court then concluded

> *"...clearly on the face of it, the provisions of S.14(A)(l) of the T.LD as amended appear to conflict with Article 23(6)(a) of the Constitution. This Court therefore would have had jurisdiction in this aspect of the petition, if the petition was supported by evidence. As we have found the petition lacked evidence and could not be entertained".*

In all likelihood, following the liberal line on affidavits adopted in **KIIZA BESIGYE-V-YOWERI KAGUTA MUSEVENI** [Election Petition No. 1 of2001] it is unlikely that his point would still be decided the same way.

However also worthy of comment is that the Constitutional Court, after observing a law in apparent contravention of the Constitution and governing such a fundamental right to liberty and to bail when charged with an offence, still chose to let the matter lie! Is this not countenancing an infringement of rights to continue? Even in ordinary civil matters the dictum is that Courts should not suffer illegalities [**CARDINAL EMMANUEL WAMALA NSUGUBA -V- MAKULA INTERNATIONAL HCB]**

8. ***"The suit is time barred"***
Rule 4(3) of the Constitutional Court Rules 1996 requires that a petition be filed within 30 days of the breach of the Constitution complained of.

The irony of a limitation provision for constitutional actions was well articulated by **ODER JSC** in **SERUGO** (supra) where he stated;

> *"It is certainly an irony that a litigant who intends to enforce his right for breach of contract or for bodily injury in a running down case has far more time to bring his action than one who wants to seek a declaration or redress under Article* 137 *of the Constitution"*

From an initially very strict position on this requirement the Court has now moved to mitigate its harshness. The case of **ATTORNEY GENERAL-V-DR. JAMES RWANYARARE** [Misc. Application NO.3 of 2002 arising from **CONSTITUTIONAL PETITION NO.7 OF 2002]** gives a full review of the Court's approach on the 30-day limit.

They refer to what can only properly be called lamentations of the Supreme Court on the harshness of the 30-day rule made in the case of **SERUGO** (supra). The Justices of the Court noted that the 30-day rule had the effect of stifling the constitutional right to go to the Constitutional Court rather than encouraging it and they called on the appropriate authority (who is in fact the Chief Justice) to do something.

The **RWANYARARE** case then reviews the post **SERUGO** cases where the Constitutional Court took steps to modify and mitigate the harmful effects of Rule 4. In, its decisions in **ZACHARY OLUM** (1999), **MUGERWA-KIKUNGWE** (2000), **ALENYO** (2001) **NAKACHWA** (2002), the Court adopted the position that the 30 days would begin to run from the day the petitioner perceives the breach of the Constitution. Their Lordships felt that this would "*make the rule workable and encourage, rather than constrain the culture of constitutionalism"*

The question in **RWANYARARE** was when does the perception that an Act of Parliament has breached the Constitution take place? The Court found that for a mature mentally normal person the date of perception of breach of the Constitution by an Act of Parliament would be the date when the Act comes into force because of the presumption of knowledge of the law and the old adage that "ignorantia juris nemien excusat"
However, clearly the Court still remains uncomfortable with their own interpretation.
They go on to ponder the fate of infants and unborn children who may grow up to find

that the continuing effect of a constitutional breach by an Act of Parliament contravenes their rights and freedoms or even threatens their very existence. The Court concluded on this note after reviewing part of the preamble to the 1995 Constitution.

> *"It seems to us that a Constitution is basic law for the present and future generations. Even the unborn are entitled to protection from violation of their constitutional rights and freedoms. This cannot be done if the 3D-day rule is enforced arbitrarily. In our view Rule* 4 *of Legal Notice No.4 of* 1996 *poses difficulties, contradictions and anomalies to the enjoyment of the Constitutional rights and freedoms guaranteed in the* 1995 *Constitution of Uganda. We wish to add our voice to that of the Supreme Court that this rule should be urgently revisited by the appropriate authorities"*

What happens if what is being challenged is existing law, like in the case of the **UGANDA ASSOCIATION OF WOMEN LAWYERS-V-ATTORNEY GENERAL** [Constitutional Petition No.2 of 2003] where FIDA and 5 other persons are challenging the constitutionality of the Divorce Act (Cap. 215). When does the perception of breach occur? [This case is still pending and no further comment can be made on it] It nonetheless demonstrates the folly of the Constitutional Court's "case by case" approach advocated in **NAKACHW A.**

Perhaps the most comprehensive attack on the rule has been made by maybe its most frequent victim. **PETER WALUBIRI** in his book Constitutionalism at Crossroads argues extensively why the 30-day should be done away with. Interestingly one of the lines of his attack is that the Chief Justice had no power to rule limiting access to the Courts.

This debate on the word "interpretation" has implications for Article 50 actions. In **SERUGO Justice Oder** stated that declarations cannot be made without interpretation of the constitutional provisions which the Act or Statute complained of allegedly contravenes.

It is perhaps on this basis that the Attorney General in the Non-Smokers rights case argues that before an Article 50 action can proceed, it must first go to the Constitutional Court for the requisite interpretation to be done and declarations then issued and that it is only after that the enforcement can be done under Article 50.

This argument was advanced in the Non-Smokers rights case and fortunately summarily dismissed with the Principle Judge a distinction between "interpretation" and "application" of the Constitution.[7]

9. ***An alternative remedy?***

The Constitutional Court has dismissed actions before it, which it felt, were best to alternative remedies. This was the case in the cases of In **RWANYARARE-V-ATTORNEY GENERAL** [Constitutional Petition No. 11 of 1997] and also

[7] Misc. Application No. 39 of 2001. Ruling dated 5th July 2002.

KABAGAMBE-V-UEB [Constitutional Petition No.2 of 1999]. In the latter case a petition was dismissed because the Court felt that it was disguised wrongful dismissal case better handled by a competent court under Article 50 and 129.

Also in **KARUGABA-V-ATTORNEY GENERAL** [Constitutional Petition No. 11 of 2002] the Petitioner sought to challenge Rule 15 of the Constitutional Court Rules 1996 which provided for the abatement of any petition after the death of a sole petitioner. The Rule had been applied to this effect in **NAKACHWA** (supra). It was argued that the right to bring an action was *"property"* of the petitioner as a *chose in action* and could therefore not be taken away from the Petitioner's estate (simply by fact of the petitioner's death) The Court found that the right of a citizen to petition the Constitutional Court for declarations (as opposed to redress) was a special right which was extinguished by the petitioner's death. The petitioner's claims for redress could be saved and continued in a competent court under the Law Reform (Misc. Provisions) Act 1974.

That may well be but how can this and the **KABAGAMBE** decision be reconciled with the dicta in **ALENYO** where the same Court clearly stated;

> "*... it is not relevant either that there is a remedy available to the petitioner elsewhere. That alone cannot deprive the Court of jurisdiction specifically conferred on it under Article* 137. "

In **SARA LONGWE-V-INTERCONTINENTAL HOTELS** [1993] 4 LRC 221, while considering the argument on alternative remedies, the Court held;

> "I must also state that it is true that most of not all the rights which have been provided for by the Bill of Rights are also covered by personal or private law such as the law of torts or commercial law. But that state of affairs does not deprive an aggrieved of his choice, whether to proceed under the Bill of Rights or under another branch of the law. The golden choice in this regard is the aggrieved person's".

The same position was reached in **PUNBUM-V-ATTORNEY GENERAL** [1993] 2 LRC 317, where it was held that it was no defence to a constitutional action that there are alternative remedies. A complainant was free to choose the most beneficial method legally open to him or her to prosecute his or her case.

It is certainly preferable that the citizen be free to choose his remedy. Should he seek the solace of a Constitutional Court declaration rather than the remedy of a civil suit the so be it.

10. ***Costs***

So far parties in public interest litigation appear to have been content with not seeking costs orders in their favour and the Courts have been "largely" pleased to oblige. This may have been a matter of strategy and prudence.
However as far back as **EDWARD FREDRICK SSEMPEBWA-V-ATTORNEY GENERAL** [Constitutional case No.1 of 1987] there is authority to support the

proposition that where a matter is brought bonafide in the public interest seeking clarification on important matters of law, that the costs be paid to the petitioner in any event. This is so in other jurisdictions as far flung as Australia.

In **KARUGABA** (supra) in their separate judgments, all Judges of the Court made no order as to costs "on the grounds of public interest", however without further explanation.

E. THE FUTURE

"Speak up for those who cannot speak for themselves, for the rights of all who are destitute, speak up and judge fairly; defend the rights of the poor and needy"

Proverbs 31:8-9

Several civil society organizations have submitted a joint memorandum on proposed amendments to Article 50 to facilitate public interest litigation. Some of the proposals address issues of costs and filing fees. There is also a proposal to extend Article 50 jurisdiction to the lower courts.

The potential of public interest litigation to force issues that the Government is unwilling to legislate or otherwise act upon, will come to naught if the Judiciary is unwilling to take bold steps in this new direction.
We need a bold and courageous Judiciary to take the challenge of public interest litigation and through judicial activism to give life and vibrance to the Constitution.

We need judicial creativity to bring new thinking to old problems and seek new solutions. We also need judicial courage to follow on these new solutions to give full meaning to the Constitution.

The Courts should not plod on enforcing old laws that do not stand the test of Constitution; the laws of sedition; the Divorce Act; the death penalty are only some of the offending ones.

The courage demonstrated by the Bench in **OSOTRACO-V-ATTORNEY GENERAL** [H.C.C.S No. 1380 of 1986] is a good development. In that case the learned Judge declined to apply S.15 of the Government Proceedings Act (Cap. 69) prohibiting making of orders for recovery of land against Government on the grounds that it did not conform with the Constitution. He ordered the Attorney General to give vacant possession of suit property to the Plaintiff.

In RWANYARARE-V-ATTORNEY GENERAL (Constitutional Application No.6 of 2002 arising from Constitutional Petition No.7 of 2002)] the Court also found courage to do away with the protections under the Government proceedings Act and to grant an injunction against the Government.

The Non-Smokers rights case was also path breaking by the trial Judge. As one commentator put it *"by courageous and liberal interpretation to the Constitution, this decision seems not only to have potentially opened wide the flood gates for public interest litigation in Uganda, but to have torn out the gate posts and cast them asunder."*[8]

In LUB-V-LUB [Divorce Cause No. 47 of 1997] the High Court applied Article 31 of the Constitution and found that even though the Petitioner had not proved desertion or cruelty, she would still be entitled to a divorce on proof of adultery.

However there are still very sad traces of restraint by the Bench. **LILLIAN TIBATEMA - EKIRIKUBINZA** [9] highlights a number of cases where the Bench while identifying a human rights problem has still shied away from resolving it.

One such case is **UGANDA-V-HARUNA KANABI** [Criminal Case No. 997 of 1995] where the accused was charged with sedition and in the course of her judgment, the presiding Chief Magistrate of her own brought up the issue of the constitutionality of the charges. After expressing he doubt, the Court said

> *"This Court is not a constitutional court. It therefore lacks capacity to interpret the provisions of the constitution beyond their literal meaning. As such I am of the view that where the State having regard to its supreme law keeps on its statute books a law that makes it an offence to do a certain act and hence to limit the enjoyment of a specified freedom, this Court will accept that restriction as lawful and shall go ahead to punish any transgression of the same according to the existing law until such a time as the State deems it fit to lift such restriction after realizing that such restriction violates a certain right"*

The Court went on to use the existence of the Constitution and the individuals right to freedom of expression as a point of mitigation!

The question is why the Court didn't refer the matter for interpretation. Why did it convict and sentence in light of what it felt was a contravention of the Supreme Law of the land. Even more strange is that on appeal to the High Court, again though not raised by the parties, the Court ruled the trial Magistrate's concerns on constitutionality and stated that it should have been referred to the constitutional Court. The Court declined to do so itself since, the matter was not brought up before it.
However, it is not for the Judiciary to go it alone. Even to the Bar, there is a call to action. George Bizos a leading South African Human rights lawyer said;

> *"It has been said that the Courtroom is the Last forum in which the oppressed can*

[8] Law Africa Commentaries
[9] In her paper "The Judiciary and enforcement of Human Rights: Between Judicial Activism and Judicial Restraint [East African Journal of Peace and Human Rights vol. 8 No.2 2002]

speak their minds. Our Jobs as lawyers is to facilitate that opportunity"[10]

In Uganda's context this is doubly important. **DR. RWANYARARE's** unrestricted access to the Courts should be seen as fundamental to the resolution of political disputes. AS seen before and continue to see, when out of choices aggrieved citizens go to the bush.

Bizos[11] has further advice for the Bar.

> *"Lawyers should do enough work to make a good living, but if they have a social conscience then they should not shun badly paid or even, if circumstances present themselves, they should in some cases work for nothing. If they do that, not only is it good for their country or community but it is also socially significant"*

Thank You.

[10] International Bar News September 2003."Driven to defend the disadvantaged. A profile of George Bizos".
[11] Ibid

ANNEX 8

A PAPER ON

THE CRIMINAL ASPECTS OF ENVIRONMENTAL

LAW

Vincent Wagona
Ag. Senior Principal State Attorney Directorate* of *Public Prosecutions

INTRODUCTION

Criminalizing certain acts or omissions is one of the methods for attaining environmental protection. Other methods include inspections, negotiations, compliance promotions and civil litigation.

This paper highlights the criminal aspects of environmental law, including the legal technicalities relevant to the prosecution of environmental cases.

Generally, an environmental crime is any deliberate act or omission leading to degradation of the environment and resulting into harmful effects on humans, flora, fauna and natural resources. Environmental crimes however include all violations of environmental laws attracting criminal sanctions.

Traditional criminal law did not seriously provide for environmental protection. Consequently, aggrieved citizens relied mainly on civil remedies under the common law of nuisance and trespass to abate environmentally offensive conduct.

However, there are a few provisions in our Penal Code Act relating to environmental protection in the sense of protecting the right to a clean and healthy environment.

Parts XVII provides for nuisances and offences against health and convenience

Part XXI provides for offences endangering life or health.

- S.160 - Common nuisance

- S.171 - Negligent act likely to spread infection of disease
- S.l72 - Adulteration of food or drink
- S.173 - Sale of noxious food or drink
- S.174 - Adulteration of drugs
- S.175 - Sale of adulterated drugs
- S.176 – Fouling water
- S.177 – Fouling air
- Offensive trades

- See also S.230 - Dealing in poisonous substances in negligent manner.

The effectiveness of the above provisions on environment and/or public health protection is rather limited by number of factors, including:-

- While the National Environment Act (NEA) and regulations made under it are more effective in creating specific environmental offences, the offences under the Penal code are generalized and their interpretation may be difficult and controversial;

- While the offences both under the Penal Code and the NEA are misdemeanours, the NEA includes the option or addition of a substantial fine and is therefore likely to be more deterrent.

The NEA therefore provides a more comprehensive and effective legal frame work for environmental protection measures within the criminal justice system.

OFFENCES AND THE LAW APPLICABLE

Environmental offences are created mainly under the National Environment Act Cap. 153 and also under subsidiary legislation made under the said Act, namely:

1. The National Environment (Wetlands, River Banks and Lake Shores Management)

Regulations - S.l 3 of 2000.

2. The Environment Impact Assessment Regulations S.l 13 of 1998.
3. The National Environment (Standards *for* Discharge of Effluent into water *or on* land) Regulations S.l 5 of 1999.
4. The National Environment (Hilly and Mountainous Areas Management) Regulations of 2000 Supplementary 1 - 2000.
5. The National Environment (Waster Management) Regulations of 1999.
6. The National Environment (Minimum Standards *for* Management of Soil Quality) Regulations S I 59 of 2001.

Environmental related offences are also created in Acts such as the Water Act (Cap. 103) and the Fish Act (Cap. 197)

There are various offences and penalties relating to:-

- Environment Impact assessment (SS. 19,20 and 96)
- Environmental Standards relating to air, water, discharge of effluent, noxious smells, noise, vibrations and soil (Parts VI and VII and S.98)
- Hazardous waster, materials, chemicals and radioactive substances (SS.52, 53, 54, 55, 56 and 99)
- Pollution (Part VIII, SS.6I and 100)
- Environment restoration orders (SS. 67, 72 and 101)
- Environmental Inspectors (SS. 79, 80 and 95)
- Record keeping (SS 77 - 78 and 97)
- Wetlands, lake shores and river banks (The National Environment (Wetlands, River Banks and Lakeshores Management) Regulations, 2000). See also the main Act.

Environment Impact Assessment

The Act defines what an Environmental Impact Assessment is.

The law requires every developer of a project of the type described in the Third Schedule to the Act to submit a project brief and if it is determined that the project may, is likely to or will affect the environment, the developer is required to undertake an EIA to determine the impacts of the proposed project on the environment. The burden is on the developer to conduct and submit an EIA report to NEMA.

After conduction an EIA, the developer is under a legal duty to ensure that the requirements of the EIA are complied with. This requirement arises both under the Act and the EIA regulations, 1998.

Failure to submit a project brief or to prepare an EIA when required to do so, or fraudulently making a false statement in the EIA is an offence punishable with imprisonment of up to 18 months or a fine of not less than shs. 180,000/= or both.

Having a project without an EIA is in itself an offence.

Environmental standards

Activities and operations impacting on the environment must be within prescribed minimum standards, criteria and measurements relating to:

- The discharge of effluent and waste waters;
- Soil quality, the ozone layer and solid waste;
- Air, noxious smells, pollution, noise and vibrations.

Waste management

What amounts to 'waste' is defined in the Act. Wastes have to be classified and prescribed as such. This has been done under the National Environment (Waste Management) Regulations, 52, 1999.

Every person is under a duty to manage wastes generated by his or her activities in such a manner that does not cause ill health to any person or damage the environment.

No person is allowed to dispose of toxic and hazardous wastes into the environment unless he or she follows the law and the guidelines.

It is an offence to import any waste which is toxic, extremely hazardous, corrosive, carcinogenic, flammable, explosive or radioactive.

It is an offence to discharge hazardous chemicals, substances or oil into water contrary to established guidelines. The offender may be ordered to pay the cost of removal (of oils) and restoration of the environment damaged and compensation

These offences are punishable by imprisonment for not less than 36 months or a fine of not less than 360,000/= and not more than 36,000,000/= or both.

Pollution

"Pollution" is defined in the Act.

It is an offence to pollute or lead any other person to pollute the environment contrary to the set standards or guidelines or in excess of conditions set by a license. The offences attract imprisonment for not less than 18 months or a fine of not less than 180,000/= and not more than 18,000,000/= or both.

Environmental restoration orders

NEMA has powers to issue environment restoration orders requiring a person who has damaged or is about to damage the environment, to restore it, not to do the act which may result in damage or to compensate for damage already done. See SS. 67 and 70. The same orders can be issued by court under S.7I. There is a right of appeal to court against a restoration order issued by NEMA.

Nothing in the law stops NEMA from issuing a restoration order where criminal

proceedings have been instituted and are still pending against the offender.

Failure to comply with a restoration order is an offence attracting a penalty of 12 months imprisonment or a fine of not less than 120,000/= and not more than 12,000,000/= or both.

Environmental Inspectors

The Act creates the institution of environmental inspectors (S.79) with powers to enter on any land, premises or vehicle and inspect to determine whether the provisions of the Act are being complied with. The inspector has many other powers under S.80.

Hindering or obstructing an environmental inspector, or failing to comply with a lawful order such as an improvement order issued by an Environment Inspector is an offence attracting a term of imprisonment of not less than 12 months or a fine of not less than 120,000/= and not more than 12,000,000/=.

Record keeping

Those who engage in activities likely to have a significant impact on the environment are required to keep records of the amount of wastes, by- products, effects generated and how far they are complying with the provisions of the Act.

Failure to comply with the above and the fraudulent alteration of records are offences punishable with up to 12 months imprisonment or a fine not less than 120,000/= and not exceeding 12,000,000/= or both.

Wetlands, lake shores and river banks

The law (S.37 of the regulations) prohibits any reclamation or drainage, depositing of any substance, damaging or destruction of any wetland without a permit from NEMA. River banks and lake shores are also protected.

A person convicted is liable to imprisonment of not less than three months or a fine not

exceeding 3rn/=.

In addition, the person may be required to carry out community work that promotes the conservation of wetlands

Permits and licenses

Certain activities having environmental impacts are prohibited except if permitted and regulated by permit or license. This is a very effective means of ensuring compliance with the law as the license can be revoked or stringent conditions included.
The very act of carrying out the activity without the permit or license is an offence regardless of whether or not any environmental damage has been done.

LEGAL TECHNICALITIES AND PRINCIPLES RELEVANT TO THE PROSECUTION OF ENVIRONMENTAL CRIME CASES

- **Environmental law caters for anticipatory injury or damage**. Even where a violation of the law may not necessarily result in any direct or immediate injury to person or property, failure to comply with the law is an offence. In such cases, the law seeks to guard against the danger or probability of injury or damage and thereby minimize it.

- **Environmental laws punish violations of the law provisions as such**. Unlike the traditional criminal offences under the Penal Code Act which prohibit specific acts and impose penalties for those acts, environmental statutes tend to provide for criminal penalties for violation of ***any*** of the provisions of the statute. That is why S. 102 of the Act creates a general penalty for breaching any provision for which no penalty is specifically provided.

- **Environmental offences tend to impose strict and vicarious liability**. Although the burden of proof lies with the prosecution, there is no need to prove *means rea* (Criminal intention). Also, the employer or proprietor of a facility can be held

liable for acts of the employees. The strict liability nature can be seen from the wording of the provisions in the statute. Also, environmental statutes are regarded as 'public welfare' statutes (creating public welfare offences). The law is aimed at protecting human health and the environment. The offender (as a reasonable person) is deemed to know that his or her conduct is subject to stringent public regulation and may seriously threaten the community's health or safety. In a real court prosecution, however, the question of strict and vicarious liability is likely to be controversial since the statutes themselves do not expressly provide for vicarious and strict liability.

- **Like for other criminal offences, causation must be established**. That is, that the prohibited event was caused by the accused's acts or omissions.

- **No requirement for notice of violation before instituting criminal proceedings**. There are always attempts to handle environmental violations amicably. In this regard, in practice, the offender may be notified that they are violating the law. The notice however is not a legal requirement and is therefore not a legal pre-requisite for instituting criminal proceedings. Criminal proceedings can be commenced even without a prior notice of violation.

- **No requirement for prior civil proceedings**. There is no requirement to institute civil proceedings before commencing criminal proceedings.

- **Drafting charges and trial procedure.** The rules under the MCA apply.

- **Reporting of cases**. The practice has been that aggrieved members of the public or interested environmental concern groups report a case to a lead agency, the District Environment office or NEMA headquarters. Environment cases can now be reported directly to the Police.

- **Investigations**. Environmental inspectors playa key role to gather scientific evidence and make reports. They also serve as expert witnesses. Police need to

involve them very early in investigations.

- **Exhibits.** These include - reports of the Environment Inspectors - laboratory reports photographs - maps. Police Photographers are already being used to take photographs.

- **Decision to prosecute**. The decision to prosecute has been mainly by the Executive Director NEMA. Now the DPP will play a role.

1. **Use of criminal summons.** Environmental offences are not committed by 'criminals' in the normal sense of the word. These are people like factory managers and proprietors, mayors of local authorities, etc. Conviction for an environmental offence does not create a criminal record as such. That is why the practice is to register the case and apply for criminal summons. There is no need to embarrass offenders with arrests, unless they become uncooperative.

- **Jurisdiction and Bail.** The offences are triable and bailable by a Magistrate Grade I or Chief Magistrate.

- **Trials.** These will be characterized by specific evidence to prove ingredients and presentation of scientific evidence. A lot of background study will be expected of the Prosecutors to understand scientific evidence and present it well to the courts.

- **Punishments.** Most offences are punishable with a fine, imprisonment or both. However, under S.105 of the Act, the court may in addition to any other orders, order:

1. That the substance, equipment and appliance used in the commission of the offence be forfeited to the state;
2. That any license, permit or other authorization given under the statute and to which the offence relates be cancelled;
3. That the accused do community work which promotes the protection of the environment;

4. Issuance of an environmental restoration order against the accused.

As prosecutors, we shall in most cases be praying for deterrent sentences and high fines because of the high costs caused by degradation. For example, the degradation of a forest or wetland which has existed for many decades is not only a great loss to society, but very difficult and costly to replace.

ENVIRONMENTAL CRIME PROSECUTIONS IN PRACTICE

There are not many cases have been completed in our courts. My appeal however is that when these cases do come to your courts, and you are satisfied with the evidence, do not hesitate to convict and to impose the most appropriate sentence in the circumstances. In other jurisdictions, this has been happening.

For example:

- In U.S versus FREZZO BROTHERS INC. - 602 F.2d 1123 (3rd Cir.1979), the two defendant corporation operators were convicted of illegally discharging pollutants (without a permit) and sentenced each to 30 days imprisonment and a fine of $ 50,000.

- In U.S versus WEITZENHOFF. - 1 f.3D 1523 (9TH Cir. 1993), A manager and an assistant of a sewerage plant were convicted of illegally polluting the ocean by failing to treat waste water prior to discharging. They were sentenced to 21 months imprisonment.

- In U.S versus HOPKINS. - 53 G.3rd 533 (2d Cir. 1995) a case of discharging excessive amounts of toxic materials into a river, the defendant signed a consent order with the regulatory authority and agreed to pay a fine of $30,000 for past discharge violations.

CONCLUSION

Through a coordinated and concerted effort by all concerned, plus the necessary resources, tools and will, we shall surely see a positive contribution to environment

protection by our criminal justice system.

ANNEX 9

LIVE SIMULATION EXERCISE

THE MOOT

ECO-world is a Kampala-based NGO registered under the NGO Statute and also incorporated under the Companies Act as a company limited by guarantee.
Its objectives among others- in its memorandum include:

- Promoting public awareness on the need to protect the environment.
- To use all possible avenues to promote and expose dangers to the environment.
- To protect the environment from all harm and degradation.

On 4th June 2005, Mr. Joshua Obonyo, the Executive Director of **ECO-world** learnt from New Vision, that the Hon. Minister for Agriculture, officiated at a ground breaking function held at Lutembe beach on the shores of Lake Victoria, where **Green Roses Ltd**, a Kenya- based multinational company was preparing to construct the largest flower farm in the Great Lakes region. A US $150 million project. The New Vision reported that NEMA had 'passed' the project. The Uganda Investment Authority had already granted the investment license and construction was to start immediately. The government had granted **Green Roses** Limited a 99 year permit under the Forests and Tree Planting Act to grow flowers on 300 hectares of Lutembe forest reserve on the shores of Lake Victoria. Part of the forest is a large wetland and a habitat of immigrating birds.

On 20th June 2005, **ECO-world** wrote to NEMA requesting for the E.I.A for the project. NEMA has up to date refused to avail any documents relating to the project, it claims the information is confidential.

On 18th July 2005, **ECO-world** obtained a copy of a letter NEMA had written to **Green Roses** indicating that the project brief was satisfactory and there was no need to carry out an E.I.A.

On 15th July 2005**, ECO-world** visited the project site and carried out interviews with local people. The community was not happy with the flower project. They fear they would lose access to firewood, honey, medicinal plants, etc. A women's group called **Twekambe** headed by **Mrs. Jovah Musoke** as Chairperson with its 150 registered members, that had started selling tree seedling feared they would lose business. Other women groups that had started a handicraft business from materials obtained from the wetland in the forest had the same fears. However, others are happy with the project especially men as they hope to seek employment from the projects.

Tourists had started coming to the area to watch birds, butterflies and were buying local fruits, vegetables and handicrafts. The forest reserve is the only one where migratory

birds from Europe rest on their journey to and from the south. It is their only breeding place in East Africa.

On 30th July the Director of **ECO-world** contacted **Green Roses** on their 8th floor, Workers House office. **Green Roses** confirmed they were ready to go ahead with the project. They had obtained NEMA approval. There was no E.I.A. required by NEMA as the project brief was sufficient. They had already obtained a permit from the Forestry Department. They would employ over 200 people, pay taxes up to Ug sh.800 million annually and would use only selected herbicides and fertilizers from U.S.A. and Europe. The Company also said it had plans to plant trees in Karamoja.

FIRM 'A', **ECO-world** has come to you with strict instruction to file a suit, stop the project. Proceed.

FIRM 'B', **Green Roses** has instructed you to defend suit at ECO-world's cost and peril.

The Attorney General and NEMA have been briefed to be ready to defend the suit in event that they are sued jointly with Green Roses.

ANNEX 10

CLOSING REMARKS BY HENRY PETER ADONYO

AG. REGISTRAR, RESEARCH AND TRAINING
COURTS OF JUDICATURE

My Lords,
Your Worships,
Distinguished Guests and Participants, Ladies and Gentlemen.

I am greatly honoured by the organizers of this workshop who invited me to come and officiate at the official closing of this important workshop for magistrates where important topics in the area of Environmental law have been covered.

I am made to understand that the workshop was intended to, inter alias, to enhance your capacity and skills in adjudication of environmental cases, -to raise awareness and to generate a common understanding of the environmental litigation process.

The importance of training Magistrates as well as other judicial officers in specialised fields cannot be over emphasised and this workshop must have proved that.

Constant provision of training in new areas gives an opportunity to judicial officers to not only update their knowledge but ensure that they make decisions based on latest knowledge.

Environment and natural resources are directly linked to the survival of our people who in the majority live in the rural areas and hence directly interact with nature on a daily basis not only for their livelihood but more importantly, their survival.

It is therefore important that judicial officers whose mandate includes resolutions of disputes arising from environmental issues which may include: disputes over land ownership, protected areas, access to water, wetlands and open water, fishing rights, contract, concessions, and so on are well versed with the skills and tools to handle such disputes amicably.

The disputes may even be between government and individuals or between communities, developers or investors and individuals or communities.

In my view, the timing of this training would not have been more opportune as we are all aware that matters relating to the proper management of the environment in Uganda and the world over are of great importance for the sustainability of scarce resources not only

for ourselves but for posterity.
It is my sincere hope, that the skills and experience, you have gained during this workshop has enhanced your skills. I urge you put in practice what you have learnt.

I also sincerely hope that the workshop has enabled you to understand and conceptualise the legal and institutional framework governing the environmental management in Uganda, as well as the procedural aspects of the same. This should be a welcome insight action.

Your program shows that the workshop has been highly interactive and participatory and the inclusion of a moot on the program must have given you the practical aspect of the application of the law and procedures. This skill should be useful to you when you go back to your stations.

I urge you to take back all the materials and the knowledge acquired through this workshop and to not only put them to good use but also share it with others so that you are able to handle complex environmental cases more efficiently and expeditiously as a result of this training.

In conclusion, I would like to express my sincere appreciation to the organizers of this workshop, **Judicial Training Committee, (the Interim Governing Council of the Judicial Studies Institute), the Judicial Study Institute, Green watch, NEMA** and the **Environment**
Law Institute (ELI) of Washington DC for organizing the workshop.

I urge them to conduct similar workshops for other judicial officers in the near future so that the entire judiciary is sensitised on Environmental laws.

I also wish to extend my thanks to you the participants for being able to find time from your busy schedules to attend this important workshop.

Lastly I wish to give special appreciation to the staff from Green watch and the Training Department of the Judiciary for their dedicated efforts in making this workshop a success. I urge them to continue with the good work

Finally, I wish you all safe journey back to your respective stations.

With those few remarks, IT IS NOW MY PLEASURE TO DECLARE THIS WORKSHOP OFFICIALLY CLOSED.

GOD BLESS YOU ALL AND GOOD LUCK.

LIST OF PARTICIPANTS

No.	Names	Station	TITLE
1	BABIRYE MARY	NABWERU	GRADE I MAGISTRATE
2.	MATENGA DAWA FRANCIA	NEBBI	GRADE I MAGISTRATE
3.	TWAKYIRE SAMUEL	KASESE	GRADE I MAGISTRATE
4.	SUSAN ABINYO	MBALE	GRADE I MAGISTRATE
5.	LAGARA MICHEAL	KITGUM	GRADE I MAGISTRATE
6.	TUMWIJUKYE MATTEW	KABALE	GRADE I MAGISTRATE
7.	BUCYANA LILLIAN	RUKUNGIRI	GRADE I MAGISTRATE
8.	KABANDA ELIZABETH		CHIEF MAGISTRATE
9.	CHARLES SERUBUGA	BUSHENYI	GRADE I MAGISTRATE
10.	BALINTUMA ANGELES	NJERU	GRADE I MAGISTRATE
11.	FLAVIA NASSUNA MATOVU	MPIGI	GRADE I MAGISTRATE
12.	BAINE-OMUGISHA CATHERINE	MENGO	GRADE I MAGISTRATE
13.	BIRUNGI HERBERT	APAC	GRADE I MAGISTRATE
14.	DANIEL LUBOWA	MOROTO	GRADE I MAGISTRATE
15.	KAITESI KISAKYE MARY	ENTEBBE	GRADE I MAGISTRATE
16.	SEMPALA DOROTHY	MENGO	GRADE I MAGISTRATE
17.	OLIVE KAZAARWE	BUGANDA ROAD	GRADE I MAGISTRATE
18.	ELI KATASWA	KAMULI	GRADE I MAGISTRATE
19.	ACIO JULIA	MUBENDE	GRADE I MAGISTRATE

RESOURCE PERSONS

20.	JUSTICE J. H. NTABGOBA	KAMPALA	JUDGE,CONSULTANT
21.	JUSTICE OPIO AWERI	HIGH COURT KAMPALA	
22.	JUSTICE D.K. WANGUTUSI	EXECUTIVE DIRECTOR	JUDICIAL STUDIES INSTITUTE
23.	AKELLO CHRISTINE	SENIOR LEGAL COUNSEL	NEMA
24.	KAMANDA PATRICK	ENVIRONMENTAL INSPECTOR	NEMA
25.	CHARLES AKOL	DIRECTOR, PUBLIC EDUCATION	NEMA
26.	PHILLIP KARUGABA	ADVOCATE & SENIOR PARTNER	MMAKS ADVOCATES
27.	EMMANUEL KASIMBAZI	SENIOR LECTURER	FACULTY OF LAW MAKERERE UNIVERSITY.
28	KENNETH KAKURU	DIRECTOR	GREENWATCH
29.	VINCENT WAGONA	AG.SENIOR PRINCIPAL STATE ATTORNEY	DIRECTORATE OF PUBLIC PROSECUTION

SUPPORT STAFF:

1. IRENE SSEKYANA	GREENWATCH
2. HARRIET BIBANGAMBAH	GREENWATCH
3. TUHIMBISE VALERIAN	SENIOR TRAINING OFFICER,JSI
4. ELIZABETH ALIVIDZA	REGISTRAR, JSI
5. HARRIET WAKOOLI	SECRETARY- COURTS OF JUDICATURE

MAGISTRATES TRAINING WORKSHOP IN ENVIRONMENTAL LAW

14^{TH} – 17^{TH}AUGUST 2005.

SUNSET HOTEL – JINJA.

PROGRAMME.

Day One: Sunday 14th August, 2005.

Time	Activity	Description	Resource Person/Facilitator
4:00 – 5:00	Arrival of Participants	Check In	Greenwatch, Judiciary
7:00 – 8:00	Dinner		Greenwatch

Day Two: Monday 15th August, 2005

8:30 – 9:00	Registration of Participants	*Workshop Handouts* *Workshop Materials*	**Greenwatch**
9:00 – 9:40	**Official opening:** Remarks by Greenwatch Remarks by E.D NEMA Official Opening	- *Welcome remarks- Greenwatch* - *Opening Remarks from E.D NEMA* **- Remarks from JSI (Registrar Research & Training)** **Official Opening by Executive Director, JSI.**	**Guest of Honour: The Honourable Mr. Justice D.K. Wangutusi**

9:40 – 10:20	Overview of Environmental Problems in Uganda	- *Land Degradation* *-Water and Air Quality* **- Biodiversity Loss** *-Wetlands Degradation*	**Mr. Charles Akol Director, District Support Coordination and Public Education (*NEMA*)** ***discussion***
10:20–10:30	**Tea Break**		
10:30-11:00	Introduction to National Environmental Law	*Overview of the Legal and Institutional Framework governing Environmental Management in Uganda*	**Ms. Christine Akello (*Legal Counsel-NEMA*)**
11:00–11:15	**Discussions**		
11:15–11:40	Monitoring and Enforcement of Environmental laws	*Overview of the practical issues faced in the enforcement and implementation of environmental laws in Uganda.*	**Mr. Justine Ecaat; *Director of Motoring and Compliance-NEMA*)**
11:40 – 12:20	Administering Justice without undue regard to technicalities.	***The case of Environmental Law and Procedure in Uganda***	**Hon .Mr. Justice J.H. Ntabgoba**
12:20 – 1:00	Discussions		
1:00 – 2:00	**Lunch Break**		

2:00 –2:40	Access to Environmental Justice: The role of the judiciary and Legal practitioners	- Experiences and Lessons Learned	**Hon. Mr. Justice R. Opio Aweri.** ***(Judge of the High Court, Kampala)***
2:40 – 3:20	Discussions		
3:20 – 4:00	Public Interest Litigation (Practice and Procedure)	- *Pitfalls and Landmarks*	**Mr. Phillip Karugaba, Advocate**
4:00 – 4:30	**Afternoon Tea Break**		
4:30– 5:00	Discussions		
7:00pm	Cocktail/Dinner and Dance		Greenwatch

Day Three: Tuesday the 16th of August, 2005

8:30 – 9:00	Registration of Participants		
9:00 – 9:40	General Principles of Environmental law	*Right to a Clean and Healthy environment* *-The question of Locus standi* *-The Precautionary Principle* *-Intergenerational Equity* *-The Doctrine of Public Trust*	**Mr. Kakuru Kenneth- Director Greenwatch**
9:40 – 10:30	Discussions		
10:30– 11:00	**Tea Break**		

11:00– 11:40	Access to Information, access to justice and the Right to know	**How access to information is prerequisite to access to justice and the right to know: Uganda's experience**	**Mr. Emmanuel Kasimbazi Lecturer Faculty of Law, Makerere University.**
11:40– 12:40	**Discussions**		
12:40 – 2:00	**Lunch Break**		
2:00 – 2:30	Criminal Aspects of Environmental Law	*Overview of the legal and Institutional Framework: Technicalities relevant to Criminal Prosecution*	**Mr. Vincent Wagoona(Senior Principal State Attorney, D.P.P.**
2:30 –3:00	Discussions		
3:00– 3:30	Introduction of the Moot exercise	- *Moot Question and explanation* - *Division into Groups*	Mr. Kakuru, *Ms. Akello Christine*
3:30 - 4: 00	**Afternoon Tea Break**		
4:00 – 4:40	Moot Group Discussions	*Drafting papers*	**All Participants**
4:40 – 6:00	Moot Exercise	Moot Exercise	All Participants
7:00	**Dinner**		

Day Four: Wednesday 17th of August, 2005.

8.30 –9.00	Breakfast		
9:00- 9:40	Live Simulation Exercise	- *Moot Proceedings of the Simulation Exercise*	All Participants
9:40–10:20	Discussions		

10:20–10:40	**Tea Break**		
10:50– 11:40		***Judgements***	
		Discussions Recommendations and Way Forward	
11:40- 1:00	**Official Closing**	*Presentation of Certificates* *Closing Remarks and Official closing*	**Mr. H.P. Adonyo, *Registrar, Research & Training, JSI.***
1:00 -2:00pm	**Lunch**		
2:00-3:00pm	**Departure**		**All**