



A win for the environment

A landmark decision of the Supreme Court has raised the bar on environmental protection and has environmentalists all in applause. The case pitted environmental protection rights against individual property rights. Developers and lenders have further cause for caution.



The facts in *Godfrey Nyakana -vs.- National Environment Management Authority (NEMA) and Others* (Constitutional Appeal No. 5 of 2011) were that the Appellant had been issued a lease, obtained planning permission and had begun building a residence in a wetland. In 2004 NEMA issued a restoration order to the Appellant directing him to demolish his house within 21 days.

Under the National Environment Act, NEMA is empowered to act to preserve wetlands by, among other measures, issuing restoration orders to offenders directing them to restore the environmental conditions found before their encroachment. Previous efforts to stop the Appellant from construction in the wetland had been unsuccessful.

NEMA enforced the restoration order and demolished the house. The Appellant petitioned the Constitutional Court alleging that the powers of NEMA were unconstitutional in so much as it resulted in him being condemned unheard. The petition was dismissed hence the appeal.

The Supreme Court upheld the decision of the Constitutional Court finding that the National Environment Act had built in processes to allow a recipient of a restoration order an opportunity to be heard.

The Supreme Court also wrote into Uganda's jurisprudence the fundamental environmental law principles of Polluter Pays (that a polluter must pay for damage done to the environment and to the victims of the pollution) and the Precautionary Principle (that lack of scientific certainty should not be used to postpone action to protect the environment).

The rights of NEMA to protect the environment were firmly asserted over the Appellant's uncontested property rights. The Court made clear that NEMA had power to restrict the use of a wetland regardless of title to the land.

It is likely that NEMA will be emboldened by this decision to issue many more restoration orders to rescue the many degraded wetlands that have been buried under concrete in the name of development. The civil society organisations that joined this litigation may also get further emboldened. The National Environment Act allows any interested part to apply for a restoration order.

All developers are advised to take the environmental law compliance seriously. Developers of commercial properties should undertake environmental impact assessments and obtain approvals from NEMA. As demonstrated by this case, even developers of residences will benefit from some due diligence on environmental law compliance.

Lenders should double check the environmental law compliance on securities being taken.

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