



REVISITING THE LEGALITY OF EVICTIONS ON THE SHORES OF LAKE VICTORIA

The record-breaking rise in water levels of Lake Victoria has left many residents and business owners on its shores in fear. The rise, attributed to increased rainfall has wrecked several homes, farms and businesses.

In response to this, Government of Uganda through National Environment Management Authority (the “NEMA”) has moved to evict encroachers who are within the protection zones of wetlands, shorelines and forest reserves.

This initiative has affected people living within 100 meters of Riverbanks, 300 meters for wetlands and 200 meters for Lake shores and in forest reserves.

Some of those affected are registered proprietors who hold valid certificates of title. Others have obtained permission from NEMA to utilize the land situated in such areas including in the protection zones of the lake. This category contests the legality of the proposed evictions.

The legal issue is whether the proposed evictions by NEMA are lawful.

The legality of forceful evictions by NEMA has previously been addressed by Ugandan courts. In the case of **DMW (U) Ltd v Attorney General**

and the National Environment Management Authority Act (HCCS No. 24 of 2019), the High Court of Uganda ruled on the role of NEMA in revoking and cancelling permits and whether it amounts to breach of the permit holder’s rights. In this case, DMW (U) Ltd (“**DMW**”) was issued with various wetland resource permits for sand mining and fish farming on 6.9 hectares for a period of three years and one year respectively.

DMW contracted different parties and obtained contracts for the supply of sand with buyers in advance. However, around October 2016, the Parliament of Uganda issued directives banning sand mining including in the Lwera region, where the mining site of DMW was located. As a result, NEMA moved to evict DMW from the site and halted all activities including sand mining.

The issue before the High Court was whether NEMA’s actions amounted to a breach of the permit holder’s rights. In resolving this issue, the High Court considered the provisions of the National Environment (Wetlands, Riverbanks and Lake Shores) No. 3 of 2000 (the “**Regulations**”). Regulation 14 provides for revocation of permits. It provides that the Executive Director may, after consultation with the lead agency revoke a permit granted if he or she is satisfied that the conditions of the grant of the permit have not been complied with or that the continued use of the wetland is likely to be

injurious to the community and the environment.

Based on this, the Court found that NEMA's revoking DMW's permit based on reliance on recommendations of the Parliament was illegal. This is because the Parliament did not fall within the definition of a "lead agency" as defined by the Regulations who the Executive Director of NEMA could consult

DMW was granted costs for breach of contract and awarded over Ug. Shs. 182 Billion in compensation, general and special damages. It was highlighted that once issued with a permit from NEMA, there was a legitimate expectation that DMW would earn from the sand mines and the unlawful halting of the licenses without justification before the expiry of the respective terms of the permits occasioned financial loss.

The current evictions on the shores of Lake Victoria have been directed by the Minister of Water and Environment under the directives of the President who is not envisaged under the Regulations that apply to lake shores. Regulation 25 of the Regulations provides for revocation of a permit to carry out activities on the shores of the lake as a lead agent or agency who the Executive Director should consult.

Furthermore, if NEMA is involved in revoking the permits of those it authorized to utilize these areas, there must be evidence showing that it did so in consultation with a Ministry, department, parastatal agency, local government system, or public officer in which or upon whom any law vests functions of control or management of any section of the environment as provided for under Regulation 25 of the Act.

Where NEMA issued such permits for the utilization of the land on the shores of Lake Victoria, the expectation was that the permit holders would be entitled to utilize this land as long as the conditions provided for in the

permits are satisfied. Revoking these permits or consents would lead to financial loss for many of the business owners and other people utilizing the lake shore legitimately.

In another case of **Haj Kaala Ibrahim v Attorney General and the Commissioner General of URA HCCS Miscellaneous Cause No. 23 of 2017**, the Minister of Trade, Industry and Cooperatives was found to have acted illegally and irrationally in banning the importation of all fishing gear in the country on the basis of a presidential directive as proper procedures were not followed.

In another interesting development, a group of Kenyans have filed a suit against Uganda according to the Daily Monitor newspaper dated 31st May 2020 for Uganda's alleged failure to control the flooding around the shores of Lake Victoria which has resulted into displacement of thousands of people. The Complainants accuse Uganda of breaching the EAC Treaty and the Nile Basin Comprehensive Framework Agreement on how much water is supposed to be released from Lake Victoria. They seek compensation from the Government of Uganda as occupants of the shores of the Lake Victoria who have been affected by the rise in the water levels. While, this case has not yet been heard, it will be interesting to see how the Courts will determine the matter. The case may very likely open the floodgates for similar suits against the Government in the future.

In view of the above, there is no doubt that the unprecedented rise of water levels of Lake Victoria will continue to raise various legal questions and there is need for the Regulators such as NEMA to take a firm legal position on the status of permit holders in this unique situation. Furthermore, the Government should provide more sustainable remedies for the permit holders and other people with legitimate legal interests on the shores of Lake Victoria. The revocation of permits on mere directives cannot be enforceable.



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