Who Sues In Public Nuisance: Nigerian Constitution and Curbing Noise from Religious Institutions in Nigeria

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Abstract

This paper examines the provision of the Nigerian Constitution regarding who sues in public nuisance to ascertain the extent it could help in curbing noise from religious institutions or organizations in Nigeria. Using a mixture of qualitative and quantitative methods of research, the study compares the common law rule and the constitutional provision on who sues in public nuisance. It acknowledges that while the two legal positions are not significantly different, the constitutional provision holds more hopes for Nigerians concerning who sues in public nuisance. This paper argues that the decision of the Supreme Court in the case of *Adeniran and Interland Transport Ltd*, which is a application of the constitutional provision, makes it easier for private individuals to sue in cases of public nuisance. Nigerians are therefore advised to take advantage of the constitution provision in acting quick in incidences of noise pollution from religious organizations. This paper recommends a shift from the traditional attitude of Nigerians in regarding noise from religious organizations with veneration as such attitude is likely to be a clog towards instituting legal actions against perpetrators of noise pollution.

Key Words: Constitution, Curbing, Institution, Noise, Nuisance, Public, Religious, Sue.

Introduction

This paper attempts to ascertain if the assertion how the constitutional provision on the right to sue, locus stand, with respect to public nuisance can help curb the menace of noise from religious organizations in Nigeria. The general rule at

common law which states that an individual cannot sue in public nuisance unless he suffers substantial injury high and above other members of the public affected by the injury is said to have been modified by the constitutions provision of *Section 6 (6›) (h) of the 1999 constitution of the Federal Republic of Nigeria.* If true, then the modification must have implications for *locus standi* of private individuals with respect to suing in public nuisance. Exploring the implications could be a measure towards curbing noise from religious organizations in Nigeria.

There are seven sections to this paper. The first is the introduction. Section Two analyzes noise as a form of public nuisance. In section four, the general rule at common law on who sues in public nuisance, will be exposed. Section five considers the constitutional provision of section 6(6) (b) and the assertion that the general rule at common law has been modified using the case of *Adediran and Ors v. Interland Transport Ltd.* The sixth section examines the possibility of curbing noise from religious organizations in Nigeria relying the constitutional provision. What follows is the conclusion which serves as section seven

Noise as Public Nuisance

Noise is a kind of sound that is transported by air. Ordinarily, noise is not considered harmful to the human or environment.[1] Hence, in some instances, noise could be required for healthy living both physically and spiritually. One cannot overestimate the impact of noise from music to the wellbeing of the individual. However, once noise becomes unbearable to the extent that it makes one uncomfortable, it becomes a kind of pollution, both to particular individuals and to the environment at large. It is in such instance that we can think of noise becoming a nuisance, that is to say, noise becoming an unwanted phenomenon in that it no longer contributes positively to the good of the environment. Its adverse effect does not only constitute in its ability to diminish the quality of air needed for good ventilation, but also in its capacity to disturb the mental state of individuals. It also constitutes energy pollution. Hence, one can talk of noise pollution. According to Hakeem Ijaiya:

[1] M. T. Okorodudu-Fubara, *Law of Environmental Protection: Materials and Text*, (Ibadan: Ibadan Caltop Publication Ltd., 1998), p.36.

Noise pollution is one of the environmental hazards affecting humans as well as climate. In most urban areas of the third or developing countries of the world especially Nigeria, there are lots of noise pollutants which include noise from exhaust cars, industrial as well as home generating plants. In advanced countries however, scientific experimentations like launching and re-lunching of rockets, bombs and satellites sounds constitutes a major climate pollutant.[2]

The hazardous effect of noise as Ijaiya highlights, is the bases of conceiving it as nuisance albeit, public nuisance.

In law, an act constitutes public nuisance when its impact cannot be said to be affect or be directed to only one person. It must be capable of affecting many people. That is the basis of distinguishing between private nuisance and public nuisance. Based on the distinction, the law also stipulates different approaches to addressing and redressing issues of private and public nuisance. No one can claim that noise affected only him or her because the impact of noise is wide-ranging. Again, what may constitute a negative impact of noise for one, may not appear so to another. Probably that is why the general rule at common law stipulates that for one to sue in incident of public nuisance, he or she must prove damage surpassing what could be claimed by others likely affected by the particular nuisance. The word noise is derived from the Latin word, 'nausa'. It may be defined in law as "excessive, offensive, persistent or startling sound".[3] Studies have shown that noise becomes offensive and unhealthy when it goes beyond certain limit, with the prescribed limit set at 95 decibels. When noise is a man-made pollution, justice demands that whoever causes it has to be sanctioned for the conduct. The question then becomes, who should bring action against the perpetrators of noise pollution.
Section Three: Who Sues in Public Nuisance

[2] Hakeem Ijaiya "The Legal Regime of Noise Pollution in Nigeria", in *Beijing Law Review* Vol.5 No.1(2014), Article ID:43969,6 pages DOI:10.4236/blr.2014.51001

[3] B. S. Kapoor, & Singh K., "Noise the Insidious Killer", in *The Tribune*, 25 November, 1995.

The question of who sues in public nuisance is usually considered under the common law rule which states that a private individual cannot sue in public nuisance unless he has suffered substantial damage over anal above what the members of the public had suffered. This is the general rule in the tort of public nuisance. It marks one of the distinctions between public nuisance and private nuisance. In public nuisance, an individual does not sue. This is because public nuisance is also seen as a crime against the state. Consequently, it is the AttorneyGeneral that sues in a case of public nuisance. *Section 150 of the Constitution*[1] established the office of the Attorney General of the federation. *Subsection Al)(at of section 174 of the Constitution,* states that the Attorney General of the Federation shall have power to institute and undertake criminal proceeding against any person before any court of law in Nigeria other than a court martial in respect of any offence created by or under any act of the national assembly.[4] Following this provision, public nuisance being a crime against state, only the Attorney General of the Federation or the Attorney General of a state, has the power institute action in the court concerning public nuisance. Accordingg to the Black's Law Dictionary:

A public nuisance falls within the law of torts only in so far as it may in the particular use constitute some form of tort also. Thus the obstruction of a highway is a public nuisance, but if it causes any special and particular damage to an individual it is also a tort actionable at his suit.[5]

This statement shows that the only time a private individual can sue in public nuisance is when he suffers substantial damage over and above the injury suffered by the public concerned. Lord Denning, L. J. in delivering the case of *Attorney General v P. Y. A. Quarries Ltd,*[6] collaborates what the *Black's Law Dictionary* says thus:

[4] *Constitution of the Federal Republic of Nigeria, 1999*.
[5] Bryan A. Garner, ed., *Black's Law Dictionary*, 9th ed., (U.S.A.: West. 2009), p.1172.
[6] (1957)2 QB 169.

A public nuisance is a nuisance which is so widespread in its range or so individualistic in its effect that it would not be rreasonable to expect one person to take proceedings ‹›n his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large.[7]

In the case of *Hasley v Essor Petroleum Co. Ltd.,*[8] it was held that the plaintiff can recover for damage to washing on a clothes line.

The common law rule has also been applied in quite some cases in Nigeria. *In Abiola v. Ijoma*[9] the plaintiff and the defendant were neighbours occupying adjoining premises in a residential area. The plaintiff kept poultry at the back of his house. At a time the defendant kept four hundred chickens in pens erected against a wall that constituted the boundary with the plaintiff. The plaintiff contended among other claims, excessive noise made by defendant's chickens in the early hours of the morning that disturbed his sleep. The court agreed with the plaintiff and awarded damages against the defendant for nuisance. The court also made an order of injunction restraining the defendant from further acts of nuisance.[10]

In *Tebite v. Marine and Trading Co. Ltd*.[11] The plaintiff, a legal practitioner occupied premises where he carried out his law practice. The defendants occupied adjourning premises where they carried out the business of boat building and repairing. The plaintiff sued contending principally that by operating its machines continuously for several hours a day the defendants had persistently caused the emission of loud and excessive noise and noxious fumes from their premises which caused the plaintiff much discomfort and inconvenience. It was established in the course of the proceedings that the noise generated and emitted by the defendants was excessive and much more than any noise that can be produced in any noisy area in Nigeria. The court held that the noise was excessive and awarded

[7] Ibid
[8] (1961)2 All E. R. 145.
[9] (1970) 2 ALL NLR 268
[10] Ibid
[11] (1971) I UILR 432

damages to the plaintiff and also restrained the defendants from further act of noise nuisance.

In *Moore v. Nnado*[12] the plaintiff sued contending that the defendant was caused excessive to be emitted from his neighbouring by playing music unreasonably loudly until late every night. The court held that the defendant liable to the plaintiff. The court also granted the order of injunction restraining the defendant from the said act of nuisance.

However the common law remedy through court action does not offer a comprehensive and infallible solution to noise pollution in Nigeria as a result of some inherent socio-economic factors which include high cost of legal fees and the frustration of forensic battles in Nigeria where the adversary system of justice system is operated.[13] It is however argued that the common law rule has been modified by a constitutional provision in Nigeria. We shall in next section examine the constitutional provision on public nuisance that is conceived to be a modification on the common rule.

The Nigerian Constitution

The constitutional provision conceived to be a modification on the common rule for public nuisance is *section 6 (6) (b) of the 1999 Constitution.* The provision reads:

The judicial power vested in accordance with the fore going provisions of this section between persons, or between government and authority and to any person in Nigeria, and all actions and; proceedings relating thereto, for the determination of any question as to the civi1 rights and obligations of that person.[14]

Going by this provision, an individual has unrestrained right of access to court if his or her civil right is affected by another person's action relying on the *Constitution of the Federal Republic of Nigeria 1999*. The provisions of the constitution

[12] (1967) FNLR 156

[13] *Section 22 National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, 2007.*

[14] *Constitution of the Federal Republic of Nigeria, 1999*

overrides any other rule, therefore it could be said that the general rule being inconsistent with the provislon of S. 6 *(6) (b) of the Constitution*, becomes void on the basis of that inconsistency. *Section 1(1) of the Constitution* stipulates, "This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria".[15] Again, subsection (3) of the same section 1 states, "If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency, be void".[16] It is on the basis of these provisions that section b (6) b is interpreted as a modification on the general rule at common law. As Karibi- Whyte notes, the provision of section 6(6)b of the constitution undermines the distinction at common law between private nuisance and public nuisance. He states that:

It is well settled that a nuisance whether public or private is an injury which confers on the person affected a right of action. Even where the private individual brings action as the relations of the Attorney-General, he must disclose a right of action on his own account. The Attorney- General is merely a nominal party. In reality it is the civil right and obligations of the person who has sustained the injury that is in issue. Hence in certain circumstances, even an injury to the public may also constitute injury to the individual. The burden is on the individual to establish his injury has a right of caution because of the cause of action. [17]

With this statement, Karibi-Whyte annunciated that the general rule at common law concerning who sues in public nuisance is no longer effective. On what he means by saying that the individual who suffers injury has a right of action because of the cause of action, let us see the meaning of the phrase 'cause of action'.

According to the *Osborn's Concise Law Dictionary* 'cause of action' means "The fact or combination of facts whlch give rise to a right of action".[18] What Karibi-Whyte means therefore is that an individual has the right to institute action in terms of public nuisance

[15] *Ibid*
[16] Ibid
[17] *Adeniran & Ors v. Interland Transport Co. Ltd*., (1991)12 SCN 27, p.42
[18] Sheila Bone, ed., *Osborn Concise Law Dictionary*, 9th ed., (London: Sweet and Maxwell, 2021), p.73.

based on how he or she could prove he or she was affected or that he or she suffered injury due to the nuisance. However, the position of Karibi-Whyte and others who think that the provision of *section 6 (6›) (b) of the 1999 Constitution* is a modification on the general rule is said not to be altogether correct. The extent to which it is said not to be correct is to be illustrated using the case of *Adediran and Ors v. Interland Transport ltd.*[19]

The Case of *Adeñiran and Ors v. Interland Transport LTD*

In this casee, the applicants (plaintiffs) are the residents of Ire-Akari Housing Estate, who have formed themselves into an association called Ire-Akairi Housing Astate Association. The respondent (defendant) is a transport company which owns and operates many heavy motor vehicles which cause excessive noise in odd times and vibrates over the estate.

They also block access made to the houses of residents and cause enormous pollution of the environment by its numerous workers. With leave of court, the appellant sued the respondent in the High Court of Lagos, claiming an injunction to restrain the nuisance occasioned by the motor vehicles and workers of the defendant (respondent) in the Housing Estate; damages for nuisance and for damage to facilities and amenities. The appellant (plaintiff) had to obtain leave ‹if court in accordance with the provisions of *section 242(1) of the 1999 Constitution*, which states that:

Subject to the provision of section 241(1) of this constitution, an appeal shall lie from delusion of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High court or that High court or the court of Appeal.[20]

The trial court ruled that the nuisance was private nuisance. The defendants (respondents) appealed to the Court of Appeal which ruled that the nuisance was public nuisance, and struck out the plaintiffs' (respondents') claim. The Court of Appeal held that since not all residents of the Estate were members of the

[19] (1991)9 NWLR (pt.214).

[20] *Constitution of the Federal Republic of Nigeria, 1999 (Amended)*

Association, the nuisance complained of was so widespread, including non-members of the Association.

Before its ruling, the Court of Appeal referred to the right to sue in respect of the nuisance the provisions of *section 6 (6) (b) of the 1999 Constitution* was considered. The question was whether this provision has altered the general rule at common law concerning who sues in public nuisance. The Court of Appeal's interpretation of this *section* is that it was not intended to widen the scope of the matter a person can bring to court by himself. It is obvious that the Court of Appeal did not take the literal interpretation. It was held that the plaintiffs (appellants) failed to prove that they suffered any particular, direct and substantial damage over and above other members of the community to which they belong. Therefore, the general rule at common law was reaffirmed.

Dissatisfied with the decision of the Appeal Court, the plaintiffs (appe11ants) then appealed to the Supreme Court which allowed their appeal in part but struck out the suit. The issue of whether *section 6 (b) (b) of the 1999 Constitution* has modified the general rule at common law on who sues in public nuisance was again considered. The issue of the supremacy of the constitution as stipulated in *Section1(1) and (3) of the 1999* Constitution was also considered. The consideration of this *section* of the *Constitution* accounts for the Supreme Court allowing the appeal in part. According to the Supreme Court judgment, the general rule at common law is inconsistent with the provision of *section 6(6)(h) of the Constitution.* Since the provisions of the *Constitution* override any other rule in existence in the Country, the provision of *section 6(6)b* of the Constitution subsists while the rule at common law is no longer effective. Thus Karibi- whyte J. S. C. who delivcred the lead judgment says that: The distinction between public and private nuisance in this country has been abolish by the 1979 constitution, the exercise of the right of action for nuisance is no longer based on or determined by the distinction in the instant case, there was evidence of acts of nuisance. This is sufficient. The action is therefore competent.[21]

[21] *Adeniran & Ors v. Interland Transport Ltd.*, (1991)12 SCN 27.

With this argument, the Supreme Court dissolved the destination between private and public nuisance as it concerns right to action.

However, the fact that the suit was struck out indicates that there is another dimension to the general rule at common law on the right to action in public nuisance. What the Supreme Court used in its decision concerning the distinction between private and public nuisance on the right of action are the literal and progressive interpretations. On the other hand, the Supreme Court adopted the sui *generis* interpretation to strike out the suit. The court considered the fact that if as *Section 6(6)(b) of the Constitution* confers on private individuals the right to action in public nuisance, all individuals affected decide to institute action separately concerning a particular nuisance, cases would be cumbersome. Several reasons could give rise to difficulties in determining the cases individually. One, individuals may vary on how they articulate the injuries they suffered as a result of a particular nuisance. Two, it would be difficult for one or more of the people affected to claim that they suffered less injuries. Three, the claims made by the people affected may be outrageous that the court may be confused on how to award damages. These factors must have been considered by the Supreme Court for in the instant case, the court gave a condition on which actions could be brought by private individuals in public nuisance. The Supreme Court ruled that for private individuals to institute action in public nuisance, the action must be in representative capacity. It equally found that for an action to lie in a representative capacity the rule is that there must be a common interest, a common grievance, and the relief claimed must be beneficial to all concerned. What these conditions imply is that the representative must have the same interest as the represented. However, in the instant case the court found that there is a misconception of the basis of the right of action in that the interest presented was that of the Ire-Akari Housing Estate Association › which does not represent the interests of the individuals affec1ed by Hue nuisance. The interest of the Association cannot be the interest of the individuals affected because the Association has its own personality. It has its own goals and aspirations and can even thwart the interest of the individuals affected to achieve its own objectives. Again, the court considered the difficulty of different individuals claiming damages resulting from different injures, arising from the same nuisance, in uniting in the same action. The Supreme Court then held that the plaintiffs

(appellants) were wrong to have prosecuted claims for nuisance jointly. In delivering the judgment, the Court said that:
The law relating to nuisance is fairly well settled. All those who dared to have complained of it must show a substantial injury to them individually arising from the nuisance. The existence of the nuisance per se does not provide a remedy.[22]

Following from this statement, the Supreme Court held that injury in the instant case resulting from the nuisance complained of is generallyy Injury to members of the Association because they are residents of the Estate, and not the specific and special injury suffered by each resident who is a party to the action.

Curbing Noise from Religious Organizations

Nigeria is a multi-religious society where congregational worships are held in mosques, churches and other nonconventional areas like residential and workplaces, in day time and even throughout the night.[23] The issue of religious renaissance has seen the evolution of many religious denominations in the country ranging from Catholicism to protestants to Pentecostalism and neo-Penticostalism. According to Ijaiya Congregational worships are held in different places including residential areas, in the daytime and throughout the night. Noise of significant levels are generated from these congregational worships with the use of heavy public address systems and intensity of the voices of the worshippers oozing from inside.[22]

Nigerians seem to be at home with the thunderous nature of the noise that emernate from religious activities around them. They do not seem to be concerned about the adverse effect of such noise on human health. The government capitalizes on the seeming ignorance of the citizens to neglect its role in enforcing the laws on noise from religious organizations in the country. A Bill to control noise emission from religious places in Lagos and Kwara States was met with strong opposition and eventually, the idea was dropped. Though Lagos State has been serious in controlling noise pollution levels in the state especially in religious houses through their environmental agency, other states of the federation are paying lip service in addressing the matter.

[22] Adeniran & Ors v. Interland Transport Ltd., p.46

[23] Ijaiya, op. cit.

The rules on who sues in public nuisance may be a major factor hindering Nigerian citizens from instituting legal actions on public nuisance. Though the common law holds no hope at all for an individual who cannot prove to have suffered more than others, the constitutional provision does. Thus, owing to this provision, individuals can institute actions. Their actions will only lack merit if they fail to conclusively prove their claim to have suffered more than others. Though, Ifeoma Enemo describes the decision of the Supreme Court in Adeniran & ors v. Interland Transport Ltd as "tantamount to giving with one hand and taking the same with the other hand",24 a glean of hope for Nigerian citizens to institute action in public nuisance is advanced in that decision. Unlike, the common law rule which barrs an individual from instituting action if he or she cannot prove to have suffered more than others, with the provision, actions of private persons can be entertained by the court until it is proven that such actions lack merit. Should Nigerians anchor on the provision, knowing whether one has suffered more than others or not, should not determine their willingness to institute actions in public nuisance. If they continue to suffer in silence with the hope that the Attorney-General will sue, they may not get the desired result. In Nigeria were religious leaders exercise great influence on political office holders, waiting for the Attorney-General to address the issue of noise from religious organizations may not be a wise option. Individuals should jettison such expectations by regularly instating actions against noise pollution is the only viable option for curbing noise from religious organizations in Nigeria.

Conclusion

It is pertinent to note that the general rule at common law never denied private individuals the right to action in public nuisance. The rule only gives conditions for such action. If an individual can prove that he or she suffered injury high and above that suffered by other members of the public who are also affected, then there would be no need for such person to wait for the Attorney-General to institute action in respect to the particular nuisance. The supreme court judgment considered above merely says that any individual claiming to have suffered from the public nuisance can institute action in the court claiming damages. It does not matter whether the person suffered substantial injury. However, the court also

[24] Ifeoma P. Enemo, Notes on the Law of Tort, vol.1, (Onitsha: Syscom Ltd, 1998), p.142.

maintains that only when an individual proves substantial injury could the action be valid. In essence, the court is not saying anything significantly different from what the rule at common law states. This means that if the Supreme Court's decision is considered, nothing has been changed on the general rule at common law concerning who sues in public nuisance. It equally means that the distinction between private and public nuisance still holds. Thus paper, have argued that the Supreme Court decision hold some hope for Nigerians as it spurs them to institute actions on public nuisance in court without waiting for the Attorney-General. Heading to such call is likely to quickly draw the attention of the Attorney general to the particular public nuisance as keeping quite may even send the wrong signal that no one has been affected. Thus, Nigerians should endeavour to be courageous enough to institute actions on public nuisance in the form of noise pollution from religious organizations in the country. The attitude of sacredness people erroneously associate with such noise is uncalled for as health is wealth and wealth includes a sound mind.

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