



## LEGAL APPRAISAL OF THE BREACH AND OBSERVANCE OF THE LAW OF NUISANCE IN NIGERIA

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### Abstract

*This article examined the law of nuisance in Nigeria highlighting its inadequacies in protecting human rights to peace, comfort and property. Nuisance significantly impacts individuals and the public, disrupting their entitlement to a peaceful environment. However, weak legal and institutional measures hinder effective enforcement. The article employed a doctrinal research approach reviewing primary sources (statutes, case laws and treaties) and secondary sources (textbooks, journals and internet sources). Findings revealed challenges facing Nigeria's nuisance law including: lack of specific laws and institutions, weak enforcement and implementation, environmental degradation and institutional barriers to justice. This article concluded that there is the need for robust legal reforms to combat nuisance in Nigeria advocating, for statutory regulations, institutional framework and effective enforcement mechanisms to protect human rights, promote peace and environmental sustainability. The research recommended that enacting legislation codifying private and public nuisance principles, establishing a dedicated institution for enforcing nuisance laws and reforming the law from case laws to statutory and institutional regulations. Effective reform will enhance the observance and enforcement of nuisance laws, protecting human rights and promoting a peaceful environment. The National Assembly should prioritize legislation to address these deficiencies and ensure a more robust framework for combating nuisance in Nigeria.*

**Keywords:** Nuisance, private nuisance, public nuisance, environmental degradation, peaceful environment, environmental sustainability and human rights.

### 1.0 Introduction

The expansion of cities and industries, conflicts arising from the use and enjoyment of property have become increasingly common. These conflicts may stem from noise pollution, air and water pollution, improper waste disposal, obnoxious odours, vibration, or any other activity that substantially impacts the quality of life or well-being of individuals living in close proximity. The Law of Nuisance, as it applies in Nigeria, encompasses both private and public nuisance.

Public nuisance is generally regarded as one which materially affects the reasonable comfort and convenience of life of a class of the public who came within the sphere or neighbourhood of its operation.<sup>1</sup> The tort could also be committed where a person carries on some activity, which may in themselves not be unlawful, but cause harm to or affects the general public or a section of the public.<sup>2</sup>

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<sup>1</sup>Registered Trustees of the Living Bread Christian Centre v Olubobokun [2017] 1 NWLR (Pt 1545) 1

<sup>2</sup>Ibid



Private nuisance, on the other hand, may be described as an unlawful interference with a person's use or enjoyment of land, or some right over or in connection with such right.<sup>3</sup> Private nuisance could therefore be in the form of physical injury to the plaintiff's property. It could also be in the nature of interference with the enjoyment of land, such as where the plaintiff is subjected to unreasonable noise or smell emanating from the defendant's neighbouring land.

The tort of nuisance is based on the rationale of balancing individual property rights with the greater public interest.<sup>4</sup> It aims to protect individuals from unreasonable interference with their use and enjoyment of property, while also addressing activities or conditions that harm the general public or a specific class within society.<sup>5</sup> In Nigeria, the law of nuisance has its roots in English common law, but it has also been shaped by indigenous customs and legislation. Historically, the tort of nuisance evolved in English common law as a means to provide remedies for individuals who suffered harm or interference due to the activities of others.<sup>6</sup> The concept of nuisance originated from the concern for public order and the protection of property rights.<sup>7</sup> Over time, the law developed to recognize both private and public nuisances.

In Nigeria, the law of nuisance has been incorporated into the legal system through the influence of English common law, adapted to suit the country's unique circumstances. As Nigeria experienced urbanization and industrial growth, conflicts arising from the use and enjoyment of property became more prevalent. Consequently, legal scholars and lawmakers recognized the need to regulate and address nuisances to protect the rights and well-being of individuals and the public. Although the law of nuisance is applicable in Nigeria, several challenges exist in the regulation and enforcement of this area of law. Inadequate enforcement mechanisms and implementation of existing laws and regulations pose significant obstacles in addressing nuisances effectively. Furthermore, the lack of clear guidelines and standards for determining the unreasonable interference or harm caused by nuisances creates ambiguity in legal proceedings. Jurisdictional issues also arise when dealing with nuisance cases that have transboundary effects such as air and water pollution. Determining the appropriate court for adjudicating such cases becomes even more problematic for the victims of nuisance. These problems have slowed down the pace of action in nuisance in Nigeria and therefore, this dissertation builds on this background to provide a legal appraisal of these issues.

## 2.0 Conceptual Framework

### 2.1 Tort

It is difficult to define tort because the law of torts runs through the whole of law.<sup>8</sup> In the first place, tort is a field of law that pervades the entire law, and is so interlocked at every point with property, contract and other accepted classifications of law. In the second, there is a central theme running through

<sup>3</sup>*Ibid*

<sup>4</sup>N Iroaganachi, 'Environmental Nuisance Law in Nigeria: Making them Effective for Sustainable Development' [2012](5)(1)ATBU *Journal of Environment Technology*, 117-128

<sup>5</sup>*Ibid*

<sup>6</sup>Kodilinye, *The Nigeria Law of Tort* (London: Street & Maxwell 1980)

<sup>7</sup>*Ibid*

<sup>8</sup>E Malemi, *Law of Tort* (2nd end., Princeton Publishing Company 2013) 3



the cases of what are called ‘torts’ which although difficult to put into words, does distinguish them from other types of cases.

Etymologically, the term ‘tort’ stems from the Latin word *tortum* which translates to mean ‘wrong.’ In legal parlance, it is applied to denote a civil wrong that precipitates harm or suffering, resulting in tortious liability for the individual who perpetrates the wrongful act.<sup>9</sup> This distinguishes a tort from a criminal act, wherein the perpetrator is penalized by the state rather than obligated to compensate the injured party. Torts can occur either deliberately (intentional torts) or negligently.<sup>10</sup> According to Winfield, tort means the breach of a duty primarily fixed by law, the duty is towards persons generally and its breach is redressible by an action for unliquidated damages.<sup>11</sup> Similarly, Kodiliye defined tort as a civil wrong involving a breach of duty fixed by the law, such duty being owed to persons generally and its breach being redressible primarily by an action for damages.<sup>12</sup> According to Malemi, a tort is a civil wrong that is not exclusively a breach of contract, and which is usually compensated by an award of unliquidated damages, injunctions or other appropriate remedy.

## 2.2 Nuisance

In its natural and bare meaning, nuisance simply mean anything or person that causes annoyance, irritation, trouble or inconvenience. However, in legal parlance, it is giving a more restrictive construction. The reason for this is not far-fetched. It is not every annoyance, irritation, trouble or inconvenience constitutes nuisance in law. In most cases, what qualifies as nuisance depends on the facts and circumstances of each.<sup>13</sup> In *Adams v Ursell*,<sup>14</sup> the court defined nuisance any conduct that interferes with the convenience and comfort of the public or a section it. It has also been defined as any unreasonable interference with another person in the use and enjoyment of land or a right attached to it.<sup>15</sup>

The tort of nuisance cannot be separated from environmental protection and other issues relating to environmental rights. This view was affirmed by the Court of Appeal in the case of *Registered Trustees of the Living Bread Christian Centre v. Olubobokun*,<sup>16</sup> where it was explicitly stated that nuisance is a branch of the law of torts which is closely concerned with the protection of the environment. It covers areas such as pollution by oil spillage or noxious fumes and other offensive smells from premises or noise generated from industrial concerns and other human activities, obstruction of public highways and others.

<sup>9</sup>J H Wigmore, 'A General Analysis of Tort-Relation' [1895](8)(7)*Harvard Law Review*;377-395

<sup>10</sup>*Ibid*

<sup>11</sup>Winfield and Jolowicz, *Torts* (12th edn)3

<sup>12</sup>*The Nigeria Law of Torts* (London: street & Maxwell 1980)

<sup>13</sup>E Malemi, *Law of Tort* (2nd edn, Princeton Publishing Co 2013) 448

<sup>14</sup>*Adams v Ursell* [1913] 1 Ch 269 D

<sup>15</sup>*Abiola v Ijeoma* (1970) All NLR 569

<sup>16</sup>(n1)



## 2.3 Public Nuisance

Public law originates from common law and is typically described as conduct or activity that interferes with or causes inconvenience or damage to the public at large. Such a nuisance may affect health, morals, comfort, safety, or welfare of the public. Public nuisance is distinctly different from private nuisance, which primarily affects an individual or a small group of individuals, usually by disturbing the peaceful enjoyment of their property or causing physical harm. Some examples of public nuisance include; obstructing right to clean and healthy air, hindering the right of passage or travel, a factory emitting excessive noise, fumes, dirt and causing discomfort to persons in the locality. The court has established the test of public nuisance to the effect that to constitute public nuisance, there must be damage or inconvenience which affects the public or a class of persons or the community.<sup>17</sup> Public nuisance could also be committed where a person carries on some activity, which may in themselves not be unlawful, but cause harm to or affects the general public or a section of the public.<sup>18</sup>

In *Shell v. Adamkue*,<sup>19</sup> the court defined public nuisance as one which inflicts damage, injury or inconvenience to the generality of the population or upon a class of people who come within its ambit. The law is that a private individual has a right of action for public nuisance if he can establish that he has sustained particular damage other than and beyond the general inconvenience and injury suffered by the public. Such an individual is also permitted to institute proceedings in his own name in respect of an injury sustained from a public nuisance. In *Adamkue's case*, the respondents alleged that as a result of the oil spillage which arose from the appellant's oil exploration, they suffered losses in that there was extensive damage to the rivers, fish ponds, forests and vegetation from where they make their living.<sup>20</sup> Therefore, the court held that they can claim for their losses.<sup>21</sup>

## 2.4 Private Nuisance

Private Nuisance is a branch of tort law characterized by the unlawful interference with a person's enjoyment or use of their property. This interference is offensive, inconvenient, or harmful such as noise, pollutants, vibration, or invasion of privacy. For an action to be considered as private nuisance, there should be a balance between the defendant's rights to use their property and the plaintiff's right to enjoyment of their property. In *Olubobokun's case*,<sup>22</sup> the court stated described private nuisance as an unlawful interference with a person's use or enjoyment of land, or some right over or in connection with such right. Private nuisance could be in the form of physical injury to the plaintiff's property. It could also be in the nature of interference with enjoyment of land, such as where the plaintiff is subjected to unreasonable noise or smell emanating from the defendant.

## 2.5 Breach and Observance

Breach and observance are fundamental concepts in the law of contract which specifically relate to the non-fulfilment or fulfilment of the terms, conditions and obligations set out in the contract or agreement.

<sup>17</sup>*Interland Transport Ltd. v Adediran* [1986] 2 NWLR (Pt.20) 78

<sup>18</sup>(n1)

<sup>19</sup>[2003] 11 NWLR (Pt.832) 533

<sup>20</sup>*Ibid*

<sup>21</sup>*Ibid*

<sup>22</sup>[2017] 1 NWLR (Pt.1545)1



However, they can also apply to nuisance situations where individuals owe their 'neighbour' a duty of care and are restricted by rules, obligations and regulations. A breach can be described as a violation or non-observance of these duties, laws, conditions, obligations, or rights. A breach may also be described as a failure on behalf of an individual or entity to act or restrain actions in a manner that prevents annoyance, harm, or inconvenience to others in the use or enjoyment of their property.

## **2.6 Negligence**

Generally, negligence is an omission or failure to do something which a reasonable man, under similar circumstances, would do, or doing of something which a reasonable and prudent man would not do.<sup>23</sup> These are all matters of fact. This means that what amounts to negligence is a question of fact not law, and each case must be decided in the light of its own facts. The essence of negligence under common law is captured in Lord Atkin's neighbourhood principle as elucidated in the landmark case of *Donoghue v Stevenson*<sup>24</sup> where he stated that 'you must take reasonable care to avoid acts or omissions which you can reasonably foresee would likely to injure your neighbour.' The elements of negligence include: a duty of care, a breach of that duty, and damage or harm resulting from that breach.

## **2.7 Environmental Pollution**

As stated earlier, nuisance and environmental issues are closely interlinked. Thus, it is essential to provide a brief discussion on the concepts of environment and environmental pollution. The term environment refers to the surroundings that encompass both the physical and biological aspects, influencing the development, reproduction, and overall welfare of organisms.<sup>25</sup> The Black's Law Dictionary defines environmental pollution as 'the harmful addition of a substance or thing into an environment especially the introduction of man-made product such as waste products into a natural area.'<sup>26</sup> According to the NESREA Act 2007, 'pollution' is defined as 'the man-made or man-aided alteration of the chemical, physical or biological quality of the environment beyond acceptable limits'.<sup>27</sup> Pollution can be broadly categorized into two major types: natural pollution and manmade pollution.<sup>28</sup> Natural pollution refers to the release of harmful substances into the environment through natural processes. These processes include volcanic eruptions, wildfires and natural weathering of rocks and minerals. While natural pollution does occur, it generally does not cause excessive harm to our lives or ecosystems due to its inherent regenerative ability. Natural pollution tends to be localized and limited in scale, allowing ecosystems to restore themselves over time. For example, volcanic eruptions release gases and particulate matter into the atmosphere, but the environment has mechanisms to manage and disperse these pollutants.

Anthropogenic or man-made pollution is caused by human activities and has significant impacts on the ecosystem. Man-made pollution arises from various sources and these include industrial processes, transportation, agriculture and waste disposal. These activities release pollutants such as carbon dioxide,

<sup>23</sup>*Ogbiri v NAOC Ltd.* [2010] 14 NWLR (Pt. 1213) 208

<sup>24</sup>[1932] AC 562

<sup>25</sup>M T Okorodudu-Fubara, *Law of Environmental Protection* (Ibadan: Caltop Publications Nigeria Limited, 1998) 19

<sup>26</sup>B A Garner (ed.), *Black's Law Dictionary* (10th edn., Thomson Reuters 2014) 1347

<sup>27</sup>National Environmental Standards Regulations Enforcement Agency Act, 2007 s 37 (hereinafter referred to as NESREA)

<sup>28</sup>H Ijaiya, 'The Legal Regime of Noise Pollution in Nigeria' [2014](5)(4) *Beijing Law Review* 1-6

sulfur dioxide, nitrogen oxides, heavy metals, pesticides, and plastic waste, among others.<sup>29</sup> Unlike natural pollution, man-made pollution persists and accumulates in the environment, leading to long-term detrimental effects on the environment. The primary drivers of manmade pollution are the human population and technological advancements.<sup>30</sup> As the population continues to grow, the demand for natural resources increases and this leads to the expansion of industrial activities and the burning of fossil fuels. These activities release Green-House Gases (GHGs) and pollutants into the atmosphere. Technological advancements have also played a role in pollution.

### **3.0 Law of Nuisance in Nigeria on Breach and Observance**

This section of this article is to analyse the law of nuisance in Nigeria with specific focus on the issue of breach and observance. It covers acts that constitute private and public nuisance, remedies available to the plaintiff and the defences to defendants.

#### **3.1 Breach and Observance of the Law of Private Nuisance in Nigeria**

##### **3.1.1 Acts that Constitute Private Nuisance**

Private nuisance is any unlawful or unreasonable interference with the use and enjoyment of land, affecting an individual who has an interest in the affected land, such as an owner, lessee, or person with a statutory right of occupancy. This interference can take various forms, including noise, air pollution or any other activity that significantly disrupts the affected individual's use and enjoyment of their land.<sup>31</sup> Private nuisance is a violation of a person's private rights as opposed to a violation of rights which he enjoys in common with all members of the public.<sup>32</sup> Thus, to constitute private nuisance, there must be damage or inconvenience which is exclusive to one-self.<sup>33</sup>

According to Malemi, conducts that constitute private nuisance are classified into three broad categories.<sup>34</sup> The first category is physical damage to property which includes conduct that inflict physical injury to any property, structures, fixtures, trees, vegetation, animals among others on the land. This can arise where crops, trees or flowers are damaged by fumes and dusts arising from the defendant's activities or when vibrations from the defendant's factory activities cause structural damage to the plaintiff's property.<sup>35</sup>

The second category is the interference with the use and enjoyment of property which includes conducts that interfere with the use, comfort, convenience, health and enjoyment of persons on the land.<sup>36</sup> Where nuisance interferes with a right over land such as easement and profit a prendre, the general rule is that liability is strict without the need to prove damage.<sup>37</sup> A plaintiff is likely to succeed in his claim where

<sup>29</sup> *Ibid*

<sup>30</sup> *Interland Transport Ltd. v Adediran* [1986] 2 NWLR (Pt.20) 78

<sup>31</sup>(n13)

<sup>32</sup>(n21)

<sup>33</sup>*Ibid*

<sup>34</sup>(n21)

<sup>35</sup>*Ibid*

<sup>36</sup>*Ibid*

<sup>37</sup> *Walter v selfie* [1851] 64 ER 849



he is able to show to the satisfaction of the court a substantial or sensible personal discomfort in the use and enjoyment of his land. This can arise in various situations such as cases involving unreasonable noise, smoke, fumes, gas, water, heat or vibration. In the case of *Schwab v Costaki*,<sup>38</sup> the court has held that operating a brothel near a neighbour interfered with the plaintiff's use and enjoyment of his property. The final category of acts that constitute private nuisance include conducts that interfere with the exercise of any right attached to the land such as easement and *profit a prendre*.<sup>39</sup> Examples of these profits include right to pasture, fishing, turf, peat, wood or right to mines, minerals, crops and sporting activities.

In the case of *Eholor v Idahosa*,<sup>40</sup> the Court of Appeal has held that to constitute a private nuisance, an act or an omission need not necessarily be a breach of building regulations or be unlawful. A private nuisance may be and is usually caused by a person doing on his own land something which he is lawfully entitled to do.<sup>41</sup> The conduct of a land owner only becomes a nuisance when the consequences of his act are not confined to his own land but extend to the land of his neighbour by:<sup>42</sup>

- i. causing an encroachment on his neighbour's land, when it invariably becomes a trespass;
- ii. causing physical damage to his neighbour's land or building; or
- iii. unduly interfering with his neighbour in the comfortable and convenient enjoyment of the neighbour's land.

### 3.1.2 Elements of Private Nuisance

The tort of private nuisance serves to safeguard the rights of landowners and occupiers by prohibiting substantial interference with their use and enjoyment of their property. However, there are elements that must be established before an action in private nuisance can lie. The plaintiff must establish that the act complained of is unreasonable and secondly that the act is continuous. There must be unreasonable and continuous interference that negatively affects an individual's convenience, use, or enjoyment of their property.<sup>43</sup> It is important to note that the conduct leading to nuisance does not necessarily have to be illegal or unlawful but must exhibit a continuous and unreasonable nature.

The plaintiff must show that the defendant's conduct is unreasonable and not necessarily unlawful because even a lawful conduct may be unreasonable and thus occasion private nuisance. However, the term 'unreasonable' appears vague and general because of unreasonable to one may be reasonable to another, and what is reasonable in one locality may be unreasonable in another locality. Thus, to assess whether the conduct of the defendant or his use of land is unreasonable, the court usually considers a number of factors such as the nature of the locality, the utility of the conduct of the defendant, abnormal sensitivity of the plaintiff or his property, the duration or the harm or injury.<sup>44</sup>

<sup>38</sup>[1956] 1 All ER 65; *Law v Florinplace Ltd* [1981] 1 All ER 659

<sup>39</sup>*Ibid*

<sup>40</sup>[1992] 2 NWLR (Pt. 223) 323

<sup>41</sup>*Ibid*

<sup>42</sup>*Ibid*

<sup>43</sup>A Adegbite and T Olorunipa, 'Torts of Nuisance in Nigeria and the Relative standards of proof per Locality' [2022](6)(2) *African Journal of Law and Human Rights* (AJLHR);168-176

<sup>44</sup>(n1) 463

It is important to note that there is no specific amount of continuous interference that constitute a private nuisance. This means that a one-time or occasional disturbance may not amount to a private nuisance unless the interference is substantial.<sup>45</sup> For instance, it has been held that a noisy pile driving at night in the course of building constituted a private nuisance.<sup>46</sup> In the case of *St. Helen's Smelting Co v Tipping*,<sup>47</sup> the court ruled that the defendant's operation of a smelting works, which emitted noxious fumes and caused substantial damage to the plaintiff's property, constituted a private nuisance due to its continuous and unreasonable nature.

To prove private nuisance, a plaintiff must also establish that the injury or interference is sensible and substantial, and that the defendant's conduct was unreasonable in the circumstances. Sensible material damage refers to tangible material damage to the plaintiff's property, and the nature of the locality is a factor to consider when deciding whether the acts complained of are actionable. The tort of private nuisance can only be established if a plaintiff can show substantial interference with their enjoyment of land. The principle laid down in *Vanderpant v Mayfair Hotel Co. Ltd.*<sup>48</sup> where the court stated that every person is entitled to the comfortable and healthy enjoyment of their premises occupied by them. In determining whether a nuisance has been caused, it is necessary to determine whether the act is an inconvenience materially interfering with the ordinary physical discomfort of human existence. The question of the existence of a nuisance is one of degree and depends on the circumstances of the case.

In the case of *Abiola v Ijoma*,<sup>49</sup> the plaintiff complained about excessive noise and nauseating smells from the defendant's adjoining chicken pens. The court relied on *Vanderpant's case* to hold in favour of the plaintiff and awarded damages and an injunction restraining the defendant from further acts of nuisance. Also, in *Moore v Nnado*,<sup>50</sup> the plaintiff complained of the defendant's nuisance through excessive noise from his palm-wine bar while playing stereograms in an unreasonably loud manner far into the night every day. The court found the defendants liable upon proof that the defendants intentionally wanted to annoy the plaintiff and held that in an action for nuisance, it is not necessary to prove any injury to health.<sup>51</sup> Thus, the primary question to determine in an action for private nuisance is whether the defendant's conduct is reasonable according to the ordinary usages of mankind living in a particular society or locality.<sup>52</sup>

However, as stated earlier, it is difficult to determine what is reasonable in a particular society. To address this difficulty, the court considers nature of the locality, the utility of the defendant's conduct, the plaintiff's abnormal sensitivity, the duration of the harm or inconvenience, the defendant's malice, and the nature of the defendant's conduct. In private nuisance, the nature of the locality is usually taken into account. For example, the people living in the city cannot expect the same level of silence and clean

<sup>45</sup>*Ibid*

<sup>46</sup>*De Keyserl's Royal Hotel Ltd v Spicers Bros Ltd.*[1914] 30 TLR 257

<sup>47</sup>[1865] 11 ER 1483

<sup>48</sup>[1930] 1 Ch 138 at 165-166

<sup>49</sup>[1970] All NLR 569

<sup>50</sup>[1967] FNLR 156

<sup>51</sup>(n57)

<sup>52</sup>(n50)



air as a rural community. The court would usually consider whether the alleged nuisance is a normal conduct in the community in question and is to be reasonably expected.<sup>53</sup> However, this may not apply in cases of physical injury to property.<sup>54</sup>

With respect to the utility of the act of the defendant, the standard of comfort expected differs from one locality to another, and the court has the discretion to grant or refuse a prayer for injunction even when nuisance has been established. The court may refuse a prayer for injunction against an alleged private nuisance if the conduct is useful to the community as a whole taking into account the circumstances of the locality and the duration of the conduct. However, as a general rule, the court will not allow a nuisance to continue merely because it has social value or benefits the community. It would be unjust for the court to compel a plaintiff to bear the burden alone of an activity that benefit many others.<sup>55</sup> However, utility or social value of the alleged nuisance may become a relevant factor to consider where the defendant's activity is unavoidable in the locality such as coal mining or exploitation of mineral resources.<sup>56</sup>

The defendant's malice is crucial in determining the reasonableness of his conduct as it must not be unreasonable. Even though the plaintiff is not required to prove motive or intention of the defendant, the presence of malice or prove of same usually leads to a presumption of nuisance.<sup>57</sup> A wrongdoer's motive, intention or purpose of doing the act may show that he is not acting reasonably or lawfully. Thus, where an act is done with malice to spite or annoy a neighbour, the courts will readily make a finding of nuisance. However, note that where a plaintiff is exercising a specific legal right without more, malice may not make an interference unlawful.<sup>58</sup>

To also determine the reasonableness of the defendant's conduct, the court will also check the nature of the defendant's conduct whether it is permanent or temporary in nature. If it is a temporary conduct, it may not be actionable. For example, noise and dust emerging from the demolition of a building done in one day may not be held to be nuisance. However, continuing such may be held to be unreasonable. Also, a permanent inconvenience may be held unreasonable and actionable. In extreme cases, an injunction will not be granted to restrain a nuisance that is merely temporary, and the plaintiff will be restricted to obtaining damages against the defendant.

Finally, the court assesses the extra sensitivity of the plaintiff or his property. Generally, the law does not protect an unusually sensitive person or property. Where a person or property suffered injury because of unusual sensitivity, the court may not grant the reliefs sought. The reasons for this is not far-fetched. The law only expects a defendant or people to conform to a reasonable standard of behaviour and not the unusually high standard of conduct which the plaintiff expects from people. It therefore follows that where a plaintiff is unduly sensitive to tolerable or reasonable act to be expected in that

<sup>53</sup>(n13)

<sup>54</sup>(n50)

<sup>55</sup>*Bellew v Cement Co. Ltd* (1948) IR 61

<sup>56</sup>*Miller v Jackson* [1977] QB 966

<sup>57</sup>(n13) 473

<sup>58</sup>*Bradford Corp v Pickles* (1895) AC 587



society, his action for private nuisance will fail.<sup>59</sup> However, where a conduct is not reasonable, then the egg shell skull principle of liability will apply, and the defendant will take the victim of his conduct as he finds him and the plaintiff's action will succeed. The court will consider these factors to determine the appropriateness of the defendant's conduct in a case of nuisance.

#### 4.0 Breach and Observance of the Law of Public Nuisance

Public nuisance is any conduct that interferes with the reasonable comfort and convenience of the public or obstructs the public in the exercise of a common right. A public nuisance occurs when an individual engages in harmful activities that impact either the entire community or a specific portion of it. For instance, a manufacturing company polluting the atmosphere in a certain locality with fumes or smoke. The release of atomic waste that has detrimental effects on the environment including damage to plants, animals, and humans also constitute public nuisances. The responsibility to address public nuisances typically falls on the Attorney General who acts on behalf of the public. However, private individuals can only take legal action for public nuisance if they can demonstrate that they have suffered significant harm (particular damage) beyond what is generally experienced by others.<sup>60</sup>

#### 4.1 Defences to Nuisance

The defendant in an action for nuisance has various potential defences at their disposal. One such defense is asserting the reasonableness of their actions or omissions. The defendant can argue that the alleged act causing the nuisance was a customary or reasonable action considering the circumstances and community norms at the time. Furthermore, they may claim that there was no ill intent or malice behind the act in question. For instance, if an individual chooses to construct their residential home in an industrial area, they cannot later complain about the noise generated by nearby industrial machinery as it is a foreseeable and expected aspect of such a location.

Statutory authority is another defence in an action for nuisance. Generally, having a valid permit from a Government Department does not necessarily excuse the commission of nuisance; however, there are instances where it can serve as a defence. If a piece of land has been designated by a statutory authority for a particular purpose and the defendant is carrying out activities in accordance with that designation, their actions may be protected by statutory authority as long as they are not negligent. For example, if a land that was designated for road construction is instead used to build a residential house, the government department can rely on the statute as a defence if they need to demolish the house and the owner brings an action seeking to prevent the demolition or claim compensation or specific performance.

Act of God is another defence which may be applicable when an unforeseen natural event such as heavy rain and flooding causes damage or interference in the use and enjoyment of property, discomfort or annoyance. In such cases, the defendant can argue that the situation was beyond his control and was not attributable to their actions or negligence. Another related defence is the act of a stranger. This defence can be invoked if the defendant can demonstrate that he took immediate action to rectify the effects of

<sup>59</sup>Robinson v Kilvert (1889) 41 ChD 88

<sup>60</sup>Adeniran v interland Transport (1991) 9 NWLR 155; Yinusa Daodu v WWPC (1998) 2 NWLR 315.



a third party's intervention once they became aware of it. This defence highlights the defendant's prompt response to mitigate the harm caused by the stranger. There is also the defence of consent or *volentile non fit injuria* which may be utilized if the defendant can show that their actions were within the parameters of a pre-existing agreement and were reasonable. For instance, a tenant who uses a rented apartment in a manner consistent with their tenancy agreement can argue that their behaviour does not amount to a nuisance.<sup>61</sup>

The defendant in an action for nuisance may also raise the defence of triviality or *de minimis non curat lex*, which implies that the law does not concern itself with trivialities.<sup>62</sup> This defence suggests that minor or negligible interferences or inconveniences should not be considered legally actionable. The principle recognizes that in society, it is inevitable that some minor disturbances or annoyances will occur, but they should not be subjected to judicial scrutiny. For example, if the alleged infringement is so minimal that it does not significantly impact the enjoyment or use of the affected property, the defendant can argue that it falls within the realm of triviality. It acknowledges that the law should prioritize addressing substantial nuisance that has a significant impact on individuals' rights and interests rather than getting entangled in matters of minimal importance. However, it is important to note that the applicability and interpretation of the *de minimis* principle may vary depending on circumstances of each case.

Prescription or long use is another defence open to a defendant in an action for private nuisance.<sup>63</sup> This defence is based on the principle that if a certain activity has been continuously carried out in a neighborhood for a period of 20 years or more without interruption, it may establish a legal right for the defendant to continue engaging in that activity. This principle of prescription recognizes that over time, certain behaviours may become ingrained in a community and it would be unfair to suddenly deem them as nuisance. Therefore, if the defendant can demonstrate that their activity has been ongoing for the required period and has not been objected to by the affected parties during that time, they may be able to establish a legal defence against the nuisance claim.

Contributory negligence is another defence to nuisance under the law. This defence arises when the plaintiff's own actions or negligence have contributed to the harm or interference he is experiencing or complaining of. Thus, if the claimant has failed to take reasonable measures to mitigate or prevent the harm caused by the alleged nuisance, their own negligence partly contributed to the situation. By invoking contributory negligence, the defendant argues that the harm suffered by the claimant was, in part, a result of their own failure to exercise due care or to rectify the situation. This defence goes to show that the plaintiff should not be entitled to full compensation or relief if they have also played a role in creating or exacerbating the nuisance.

<sup>61</sup>Leakey v National Trust [1980] QB 485

<sup>62</sup>(n1) 485

<sup>63</sup>Miller v Jackson [1977] QB 966 CA



The final defence to consider is necessity, especially where the nuisance is committed to avoid a greater evil.<sup>64</sup> There may be situations where the defendant's actions, which may otherwise be considered a nuisance, were necessary and justified under the circumstances. For example, if the defendant's actions were undertaken to protect life, property or public welfare and there were no reasonable alternative measures available, the defense of necessity can be invoked. In certain emergency situations, individuals may be compelled to take actions that could potentially cause some inconvenience or harm to others to avert a more significant or imminent danger. However, it is important to establish that the harm caused by the alleged nuisance was proportionate and reasonable when compared to the potential harm that would have occurred if the defendant had not taken action.

## 5.0 Remedies for Private Nuisance in Nigeria

There are three main remedies available to the victims of private nuisance. These include abatement, injunction and damages. One of the strong ways of abating private nuisance is by seeking and obtaining an abatement against its continuance. The court has recognized the remedy of abatement as one of the ways in which the unwarranted and unjustifiable interference with a plaintiff's right can be properly terminated.<sup>65</sup> Abatement is a court order directing the defendant to take specific measures to reduce or eliminate the nuisance. For example, in the case of *St. Helen's Smelting Co v Tipping*,<sup>66</sup> the court ordered the defendant to take measures to reduce the noxious fumes and other pollutants emitted from their smelting works. This is without prejudice to whatever other remedies that can be granted to the plaintiff for the injury which he has suffered as a result of the nuisance created by his neighbour.

Damages are monetary compensation awarded to the plaintiff to compensate for the injury, inconvenience, or financial loss suffered due to the nuisance. In the case of *Bamford v Turnley*,<sup>67</sup> the court awarded damages to the plaintiff for the inconvenience and financial loss caused by the defendant's brick kiln, which emitted substantial amounts of smoke and ash onto the plaintiff's property. Damages can be awarded as general damages, special damages or aggravated damages, depending on the circumstances of the case and the extent of the harm caused by the nuisance.

Injunction is another form of remedy that applies in an action for private nuisance. An injunction is a court order directing the defendant to refrain from continuing the nuisance. Injunctions can be permanent or temporary depending on the circumstances of each case. These remedies provide a range of options for addressing nuisances in Nigerian law, allowing courts to fashion appropriate relief based on the specific circumstances of each case.

## 6.0 Nuisance and Environmental Liability

Nuisance and environmental liability are closely intertwined, particularly in the realm of tort law. Nuisance, whether private or public, involves the unreasonable interference with a person's use or enjoyment of their land, and this interference can often manifest in the form of environmental harm. In

<sup>64</sup>*Smith v Scott* [1972] All ER 645

<sup>65</sup>*Eholor v Idahosa* [1992] 2 NWLR (Pt. 223) 323

<sup>66</sup>[1865] 11 HLC 642

<sup>67</sup>[1860] 122 ER 25

the context of environmental liability, nuisance can result from activities such as pollution, noise or other environmental harms. The tort of nuisance provides a legal basis for holding individuals or entities accountable for activities that result in environmental harm. This can include pollution of air, water, or soil, as well as excessive noise or other interferences that impact the surrounding environment. For example, the *Trail Smelter Arbitration case* established the principle that a party can be held liable for environmental damage caused by its activities even if the damage was not intended. This decision emphasized the polluter pays principle, which is integral to nuisance law and environmental protection. Factories can cause pollution by emitting fumes and smoke or improper waste disposal that endanger public health. However, individual plaintiffs are precluded from suing under public nuisance unless they can prove material damage. The old position of the law was that only the Attorney General could sue for public nuisance.<sup>68</sup> However, a private individual could sue if they could prove that they had a special interest or suffered a special injury that was over and above the injury suffered by the other members of the public.<sup>69</sup> In *Adeniran v Interland Transport Ltd*,<sup>70</sup> the court held that this requirement of special interest or injury was unconstitutional, null and void, as it violates the CFRN which guarantees the right to access the court to seek remedies. The court noted that a claimant has an unlimited standing or *locus standi* to sue and claim damages for public nuisance. The Supreme Court has also liberalized *locus standi* in environmental matters to ensure that victims of pollution seek justice through NGOs, human rights activists and other good spirited individuals.<sup>71</sup> However, the plaintiff must still prove special loss, injury or damage resulting from the public nuisance complained of.<sup>72</sup>

## 7.0 Challenges Facing the Law of Nuisance in Nigeria

One of the challenges facing the law of nuisance in Nigeria is the lack of legislation that codifies the principles of private and public nuisance. The regulation of nuisance in Nigeria primarily relies on judicial decisions, many of which are derived from English case law. While these English precedents can serve as persuasive authority, the lack of a comprehensive legislative framework specific to Nigerian conditions creates uncertainty and hinders the development of a more tailored approach to addressing nuisance-related issues. In the absence of clear legislative guidance, courts are left to interpret and adjudicate disputes based on English cases whose principles may not always align with the unique circumstances and needs of the Nigerian context. The lack of codified legislation often leads to inconsistencies and difficulties in providing clear and predictable remedies for individuals affected by nuisance. As such, it becomes crucial for Nigeria to consider enacting legislation that reflects the local context and provides a comprehensive framework to address both private and public nuisance in a manner that suits the specific needs and circumstances of the country.

Apart from case law, nuisance is also regulated by criminal statutes and environmental laws in Nigeria. However, these laws are enforced more in the breach due to lack of a strong and effective framework. NESREA, police and judiciary are the key institutions that play essential roles in curtailing nuisance. However, there is no institution specially empowered to regulate issues of nuisance and level of

<sup>68</sup>*Amos v Shell - BP Nig. Ltd.* [1974] ECSLR 486

<sup>69</sup>*Ibid*

<sup>70</sup>[1991] 9 NWLR (Pt.214) 155

<sup>71</sup>Centre for Oil Pollution watch v NNPC [2019] 5 NWLR (Pt. 1666) 518

<sup>72</sup>*Ibid*



compliance with environmental laws on air, water and noise pollution. As a result, the issue of environmental degradation has continued to threaten public health and environmental wellbeing of the people in fast-growing cities like Port Harcourt, Lagos and Abuja.<sup>73</sup> The dumping of municipal solid waste on the streets has negative impacts on the environment, including physical nuisance, offensive odours and the emission of methane gas, which contributes to climate change.<sup>74</sup>

Another challenge is the issue of consumerism, where consumers are increasingly demanding their rights to safety, information, choice, and a hearing.<sup>75</sup> They are protesting against unsafe or adulterated products and complaining that businesses and those who run or supervise them are a nuisance to consumers and do not take them into confidence in affairs that concern them.<sup>76</sup>

Finally, while the law exists to protect individuals from harmful and disruptive actions that interfere with their enjoyment of their properties and well-being, issues arise around the consistent enforcement and compliance of these laws. The effectiveness of the regulatory bodies and institutions responsible for controlling and curbing nuisance such as NESREA, the police and the judiciary can be hindered by limited resources, insufficient capacity, and at times, corruption. As a result, there may be instances where parties responsible for causing nuisance escape appropriate legal consequences, leading to frustration among affected individuals. There may also be instances where individuals wrongly accuse others of causing nuisance, potentially leading to legal disputes and unnecessary conflicts. Seeking redress in court can also be frustrated due to the high cost of legal representation and filing fees as well as the procedural delays and technicalities which are not uncommon in the Nigerian legal system.

## 8.0 Summary of Findings

That nuisance is often discussed in two facets; private nuisance and public nuisance. Private nuisance complements environmental law, law of tort and trespass to land to protect individuals in their use and enjoyment of their property against trespass, discomfort, unreasonable interference and inconvenience. However, before an action for private nuisance can lie, the plaintiff must demonstrate that the interference was continuous and unreasonable. These elements are determined on a case-by-case basis using factors such as nature of the locality, conduct of the defendant, sensitivity of the plaintiff, duration of the interference, malice among others. Public nuisance on the other hand seeks to protect the public against discomfort, interference and inconvenience. It raises criminal issues and therefore can be enforced by the police and Attorney-General. However, a private person can enforce public nuisance if he can prove particular damage over and above that suffered by the general public.

That the observance of nuisance laws in Nigeria is regulated by various laws and institutions. The primary legislation that governs nuisance is the Criminal Code Act, Penal Code, NESREA Act, Harmful Waste (Special Criminal Provisions) Act and regulations made by NESREA such as National

<sup>73</sup>O Sadiq and Others, 'Municipal Solid Waste Disposal and Its Environmental Implication in Wuse Zone 5, Federal Capital Territory, Abuja, Nigeria' [2019] (7) *International Journal of Environmental protection and policy*

<sup>74</sup>*Ibid*

<sup>75</sup>A Ogechukwu, 'Consumerism the Shame of marketing in Nigeria challenges to Corporate practices'[2013] *Business Sociology*

<sup>76</sup>*Ibid*



Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations 2011, National Environmental (Noise Standards and Control) Regulations 2009 and National Environmental (Sanitation and Wastes Control) Regulations of 2009. Other applicable laws include the CFRN 1999, Police Act 2020 and the EIA Act 1992. Institutions such as NESREA, NPF, Office of the Attorney-General and judiciary help in enforcing the observance of nuisance laws in Nigeria.

That breaching the law of nuisance in Nigeria can have several legal implications. Aggrieved persons may include landlord, land owners, lawful occupiers, tenants, any member of the public, and others. The affected party can seek remedies through civil litigation by approaching the court for abatement, injunctive reliefs and/or damages. In some cases, breaching nuisance laws may also attract environmental or criminal liability, depending on the offence and the specific provisions of relevant statutes such as the CCA or other criminal statutes.

That nuisance law in Nigeria faces different challenges which make their observance and enforcement difficult to achieve. Some of these challenges include lack of specific laws and institutions on nuisance, weak enforcement and implementation of the existing regimes, increasing rate of environmental degradation and institutional barriers in seeking justice in the country.

That although India and the USA are common law jurisdictions, they have stronger regimes for the observance of nuisance laws in their territories. Indian judiciary, for examples, is proactive towards the adoption of criminal and environmental mechanisms to combat nuisance. The USA, particularly in Texas, has Nuisance Abatement Statutes that allow law enforcement agencies to close properties involved in illegal activities. From these jurisdictions, Nigeria can learn the importance of enacting specific legislation, utilizing criminal mechanisms, and establishing collaborative efforts among different agencies to effectively address public nuisances.

## **9.0 Conclusion**

The necessity for peace and comfort in the world forms a fundamental aspect of human rights. It includes not only the right to peaceful enjoyment of one's property but also the right to have harmonious relationships with members of the public and the liberty to access public facilities without unreasonable interference, inconvenience or annoyance. However, nuisance, whether in its private or public form, poses a serious threat to these rights. It disrupts the peace and comfort of individuals, causing physical discomfort, emotional distress and sometimes health hazards. The impacts of nuisance extend beyond the affected individuals to include the general public, hindering the overall quality of life in communities.

Unfortunately, the law combating nuisance in Nigeria is weak and ineffective due to lack of strong legal and institutional measures to address and prevent nuisances effectively. The existing regimes often suffer from inadequate implementation, insufficient resources, and weak enforcement. As a result, there has been a lack of awareness and compliance with the law coupled with inconsistent judicial application and lengthy judicial processes. Therefore, addressing these deficiencies and enhancing the observance



of nuisance laws will require a reform of the law of nuisance from its case law nature to statutory and institutional regulations.

## **10.0 Recommendations**

Based on the foregoing analyses and submissions, the following recommendations are made:

The National Assembly should enact legislation on nuisance codifying the principles regulating private and public nuisance. This legislation should clearly define and differentiate between private and public nuisances, provide specific remedies and enforcement mechanisms, and establish strict liability for those causing nuisances. It should also cover a wide range of activities and factors that contribute to nuisance, such as noise pollution, environmental degradation and encroachments.

The National Assembly should establish a legal institution for the purpose of enforcing compliance and observance of nuisance laws in Nigeria. This institution should be empowered and adequately funded to conduct regular inspections, impose substantial fines and penalties and ensure timely resolution of nuisance complaints.

The existing regulatory bodies responsible for enforcing nuisance laws such as NESREA, police, Office of the Attorney-General, judiciary and state environmental agencies should be empowered with sufficient resources, capacity and authority to effectively monitor, regulate, and enforce compliance with nuisance regulations.

To address the delays in judicial processes, there is need to streamline and expedite legal proceedings related to nuisance cases. Specialized courts or dedicated judges could be assigned to exclusively handle nuisance disputes, ensuring swift adjudication and resolution of cases. Also, alternative dispute resolution mechanisms such as mediation and arbitration can be encouraged to provide quicker and more cost-effective avenues for resolving nuisance disputes.

Agencies in charge of environmental matters should be more proactive in enforcing environmental regulations and standards. This can be achieved by ensuring that polluters pay for polluting the environment and that all facilities or establishments including private property owners or occupiers conduct an EIA before executing any project or launching any equipment.