

Difficulties in Establishing Liability for Nuisance in Tanzania: A Critical Analysis of Law and Policy

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¹*Date of Receiving: 03 April 2026;*

Date of Acceptance: 05 May 2026;

Date of Publication: 02 July 2026

Abstract

This study analyzes the difficulties in establishing liability for nuisance in Tanzania by highlighting how ambiguities in the Land Act and Village Land Act, along with weak institutional framework, hinder effective remedies for land occupiers in cases of nuisance. It goes arguing that slow dispute resolution within land tribunals and conflicts between statutory and customary land rights create significant obstacles in proving liability for nuisance in Tanzania. This paper delves into the legal doctrine of nuisance under tort law, with a particular focus on its difficulties in establishing liability for nuisance in Tanzania. The law of nuisance in Tanzania often fails to address modern environmental hazards due to its focus on traditional “neighbour” disputes and land ownership. The restrictive approach to legal standing (*locus standi*) in public nuisance cases weakens environmental protection policies, often hindering the ability to bring suits. While the law provides for damages and injunctions, the burden of proof and litigation costs create significant hurdles for plaintiffs. Despite the existence of policies and statutory provisions and the application of common law principles, nuisance cases remain difficult to prove and enforce. This paper has employed both Doctrinal Research Methodology and Non-Doctrinal Research Methodology in the discussion

This research reinforces the role of nuisance law as both a safeguard of individual rights and a mechanism for promoting public welfare and ecological justice. It concludes by recommending reforms to harmonize land laws, improve evidentiary standards in land tribunals, and strengthen environmental regulatory enforcement to better protect property owners when nuisance occurs. By addressing these policies, legal institutional and enforcement gaps, Tanzania can better balance the rights of property owners and ensure a healthy, undisturbed environment for citizens.

Keywords: *Difficulties; Liabilities; Nuisance; Uncodified; Unreasonable Interference.*

1. Introduction

The law grants the owner of a property the right to use and enjoy their property free from encumbrance or hindrance. On the other hand, we have the right to assert that the tort of nuisance has been committed if another person’s improper use or enjoyment of the client’s property results in an unlawful interference with the client’s enjoyment or of that property or his rights over it or in connection with it. Examples of this would be anything that disrupts a person’s comfort, health, or safety.

Nuisance is a word which is very commonly used in day to day lives and therefore it can be interpreted that it is nothing, but inconvenience caused to a person. It is recognized by the law that minor inconveniences can be

¹ *How to cite the article:* Mlowe J.C (July 2026); Difficulties in Establishing Liability for Nuisance in Tanzania: A Critical Analysis of Law and Policy; *International Journal of Law, Management and Social Science*, Vol 10, Issue 3, 1-28

sustained, as they are unavoidable and only those which cause major or substantial harm are actionable. It is generally a continuing wrong or a temporary wrong and not a momentary one. Various jurists have given many definitions of nuisance. According to Pollock, Nuisance is the wrong done to a man by unlawfully disturbing him in the enjoyment of his property, or, in some cases, in the exercise of a common right.²

The term “nuisance” has a more specific meaning in the context of the law than it does in everyday speech. In any given society, the law will always make an effort to strike a balance between the conflicting interests of the plaintiff and the defendant in the case at hand. The concept of a nuisance is something that everyone is exposed to on a routine basis, and the courts in India have built their own body of precedent by borrowing many ideas and concepts from English legal principles and rulings based on common law.

The offence of nuisance is primarily defined as “common nuisance” under Section 170 of the Tanzania Penal Code.³ A person who does an act not authorized by law or omits to discharge a legal duty and thereby causes any common injury or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights commits the offence termed as “common nuisance”, and shall be liable to imprisonment for one year.⁴

The nuisance law exists to protect people from adverse environmental events such as deadly gas emissions, bad smells, excessive noise, vibrations, and oil spills. It protects people from unauthorized intrusions into their rights to air, sea, and light, as well as their right to travel freely on highways and streets.

1.1 Background to the Research Problem

The law of nuisance in Tanzania often fails to address modern environmental hazards due to its focus on traditional “neighbour” disputes and land ownership in nature. The restrictive approach to legal standing (*locus standi*) in public nuisance cases weakens environmental protection policies, often hindering the ability to bring suits. While the law provides for damages and injunctions, the burden of proof and litigation costs create significant hurdles for plaintiffs. Proving the “substantial” and “unreasonableness” nature of the interference requires solid evidence, which is often hard to produce, especially when industrial pollution takes time to manifest physical damage. Despite environmental policies, enforcement is weak due to limited resources, lack of specialized skills among prosecutors, and excessive discretion in environmental management.

The legal process is often plagued by poor prosecution of environmental crimes and a lack of awareness among key legal stakeholders. While the law exists, it is underutilized due to institutional inadequacies rather than a lack of legal framework. Following the 2020 Amendment Act, standing is limited, hindering public interest litigation (PIL) in environmental and nuisance cases. The Land Act (Cap 113) and Village Land Act (Cap 114) give significant power to Village Councils to manage land.

However, the institutional conflict and overlapping mandates between Village Councils, the Commissioner for Lands, and urban planning authorities lead to conflicts in land management, making it hard to identify the responsible party for a nuisance. The land laws [Cap 113 & 114], they lack specific, modernized provisions for addressing modern-day nuisance. The heavy reliance on common law principles often renders the laws rigid, making them unsuitable for managing urban density and resulting in low success rates in private nuisance lawsuits.

1.2 Statement of the Problem

The concept of the Law of torts in Tanzania relies heavily on English common law. Private nuisance requires proving continuous, unlawful interference with land enjoyment and direct property interest, which creates a high

² A.K Jain, Law of Torts, published by Ascent Publications, Delhi, 8th edition, 2016, pp.249

³ The Penal Code [Cap 16]

⁴ Ibid

barrier for tenants or those without formal land titles.⁵Public nuisance is scattered across the Penal Code (Cap 16), while environmental nuisance is governed by the Environmental Management Act (EMA, 2004).

The lack of a harmonized civil tort statute creates jurisdictional conflicts between local government by-laws and national laws. Proving specific “unreasonableness” in vibration, dust, or noise cases requires technical data (e.g., decibel tests). The lack of local laboratories and the high cost of expert witnesses make these cases difficult to pursue.⁶

The Policy Implementation for nuisance in Tanzania is provided under the EMA 2004 which incorporates strict liability and the “polluter pays” principle, implementation is heavily bureaucratized under the National Environment Management Council (NEMC).

1.3 Rationale of the Study

This paper seeks to analyze the concept of nuisance, explain the essentials of it and present definitions of various jurists. It also seeks to distinguish between the modern day meaning of nuisance and the earlier concept of it, it focuses on how nuisance as a tort has developed over time. With the help of judicial precedents, various cases of nuisance are explained. It also tries to establish the importance of nuisance as a concept in tort law and its need to be codified. This paper would be giving a basic understanding of nuisance and would gradually move forward to give a wider perspective of it and compare it with the foreign interpretation of nuisance cases.

It would try to remove the confusion between nuisance and negligence and give suggestions on matters related to nuisance. The rationale for studying the difficulties in establishing liability for nuisance on land in Tanzania lies in the urgent need to address the failure of current legal frameworks to balance industrial/urban development with the rights of property occupiers, amidst rapidly changing urban landscapes. A critical analysis of the laws is necessary because, despite the existence of the Land Act [Cap 113 R.E. 2023] and environmental regulations, private individuals often struggle to prove the “unreasonableness” of interference in tort, leading to high incidences of unresolved land disputes and inadequate remedies.

1.3.1 Rationale and Key Challenges Analysed

Weak Enforcement of By-laws: Urban planning, particularly urban livestock keeping and commercial activities in residential areas, leads to nuisance (noise, pollution, waste). However, local by-laws are often poorly enforced or outdated, leaving victims with little recourse.

Proof of “Unreasonable” Interference: Under Tanzanian law (influenced by common law), plaintiffs must prove that the nuisance is not just annoying, but constitutes a substantial, unreasonable interference with the use and enjoyment of land.⁷ This standard is challenging to meet.

The Problem of “Locality”: As urban areas become more densified, defining what constitutes a “reasonable” level of discomfort is complex. A victim in an industrializing zone may find it harder to prove a nuisance exists compared to a purely residential area.

⁵ Binamungu, C.S (2002), Law of Torts in Tanzania, Research and Publication Department, Mzumbe

⁶ The United Republic of Tanzania the Law Reform Commission of Tanzania Report of the Comprehensive Review of Civil Justice System in Tanzania presented to the Minister for Justice and Constitutional Affairs Dar es salaam May, 2013

⁷ Catherine.E., & Frances.Q., (2009). Tort Law, 7th Ed, Pearson Education Limited, England.p.281

Institutional Constraints & Judicial Delays: The land dispute settlement system (from Village Land Councils to the Land Division of the High Court) is often plagued by slow, inefficient processes that cannot keep up with the increasing, complex land conflicts, thus failing to provide quick remedies for nuisance victims.

Conflict Between Development and Environmental Law: While the Environmental Management Act [Cap 191] exists, it often conflicts with or overlaps with older tort laws and land legislation, creating confusion about whether a matter is a public nuisance (prosecuted by the state) or a private one (requiring private litigation).

1.4 Research Objectives

When structuring a critical analysis or research proposal on the difficulties of establishing nuisance liability in Tanzania, the most effective specific objectives focus on identifying legislative gaps, evidentiary hurdles, and policy conflicts include:

- (1) *To examine the adequacy of statutory and common law frameworks:* Evaluate whether inherited English common law and local statutes such as the Penal Code (Cap. 16) for public nuisance adequately address modern urbanization and industrialization.
- (2) *To identify evidentiary and practical challenges:* Analyze the hurdles plaintiffs face in proving “unreasonable interference” or “specific damages” (e.g., establishing scientific baselines for noise pollution, noxious odours, or industrial emissions).
- (3) *To assess the tension between land development and environmental conservation:* Explore how overarching national policies such as the National Land Policy and the Environmental Management Act (EMA, 2004) sometimes conflict with the traditional right to quiet enjoyment of property.
- (4) *To evaluate access to justice and enforcement mechanisms:* Investigate the systemic barriers (bureaucracy, costs, court delays) that prevent ordinary citizens from seeking remedies like injunctions or damages.
- (5) *To propose viable law and policy reforms:* Develop actionable recommendations to bridge the gap between private law and public regulatory frameworks to better protect vulnerable property owners and the environment.

1.5 Primary Difficulties in Establishing Liability for Nuisance in Tanzania

The author’s analysis highlights the specific reasons why winning a nuisance case is notoriously difficult in the Tanzanian context.

The standard of “Reasonableness”: Courts require plaintiffs to prove the defendant’s use of their land is “unreasonable”, which heavily favors large-scale developers and state-backed projects over individual residents.

Overlapping Jurisdictions: Public and private nuisances often blur. Environmental issues may require pursuing cases through the National Environment Management Council (NEMC) rather than directly through a civil tort claim, complicating the legal path for victims.

Inadequate Local Authority Enforcement: Rapid urbanization means local government bylaws (such as Township Rules, Cap 101) are frequently outdated or under-enforced, forcing citizens to rely on expensive and complex private civil litigation.

1.6 Research Methodology

The research methodology has employed both Doctrinal Research methodology (i.e. internal aids as the primary sources which involve Statutes, Common law, Doctrines of Equity, Applications of Laws and Judicature Application of Laws (JALA) as well as the Urban and Rural Authorities i.e. By Laws and Non-Doctrinal Research

Methodology (i.e. extrinsic aids as the secondary sources which involve books, textbooks, Journals, Articles and the published Manuscripts were used.

2.1 Conceptual Framework

Establishing liability for nuisance in Tanzania is highly challenging due to a clash between the country's economic investment policies and traditional tort law. This requires a hybrid conceptual framework that merges Strict Liability for hazardous industries with the Precautionary Principle in environmental law.

2.1.1 The Core Difficulties

The “Locus Standi” Hurdle: Under the Land Act, proving a right to sue requires showing legal possession of property, locking out informal or customary land users in peri-urban areas. The Tanzania Investment Act actively courts foreign industrial development. Courts are hesitant to shut down or heavily penalize major employers for nuisance, even when local communities suffer from severe pollution. The threshold for substantial interference requires objective tests (e.g., character of the neighborhood). In rapidly industrializing areas, what constitutes an “acceptable” neighborhood standard is vague and favors developers.

2.1.2 The Best Conceptual Framework

Given these clashes, the most effective conceptual framework is a Rights-Based Environmental and Strict Liability Approach. This framework relies on three pillars as follows:

Strict Liability for Industrial Harms (The Rylands v. Fletcher Doctrine): Requires industries to be held liable for damages caused by the escape of hazardous substances, bypassing the need to prove negligence.

Constitutional Integration: Utilizing Article 14 (Right to Life) and Article 24 (Right to Property) of the Constitution of the United Republic of Tanzania to establish a clean environment as a fundamental right.

Statutory Enforcement (NEMA): Using the Environmental Management Act (EMA), which allows communities to sue for environmental degradation without needing to prove direct, localized property ownership.

2.2 Theoretical Framework

The most effective theoretical framework for analyzing liability in nuisance within Tanzania is Legal Pluralism, supported by Law and Economics (Utilitarianism). This combination explains the tension between colonial common-law tort doctrines and statutory environmental and land policies, highlighting why establishing nuisance liability in Tanzania remains difficult. This framework resolves difficulties arising from overlapping legal regimes and the courts' struggle to balance economic development with environmental rights.

2.2.1 Legal Pluralism

Acknowledges that multiple legal systems (statutory law, English common law, customary law, and Islamic law) coexist and often conflict within the same jurisdiction. In Tanzania, land and nuisance disputes are governed by a dual system. The statutory framework includes the Land Act and the Environmental Management Act (EMA), while the courts apply the imported English common law of torts. Plaintiffs often struggle to establish liability because customary land rights and statutory land allocations frequently conflict with imported common-law definitions of property rights and “unreasonable interference.” The law struggles to uniformly protect a plaintiff when overlapping legal frameworks assign different values to land use.

2.2.2 Law and Economics (Utilitarianism)

Balances competing interests by aiming to maximize societal wealth and well-being, it asks whether the cost of preventing a nuisance outweighs the harm caused. Tanzania is rapidly industrializing and urbanizing. Courts often

apply the “locality rule” (the character of the neighborhood) when deciding if an interference is unreasonable. Under this framework, courts frequently permit industrial pollution or large-scale development in designated zones, even if it causes substantial discomfort to neighboring residents. The financial and developmental benefits of the polluter often outweigh the individual property rights of the plaintiff, making successful nuisance claims difficult to pursue.

In the case laws it can be understood that nuisance is a simple and short term, but in law it is very difficult to rightly analyze and interpret it in accordance with the facts of the case. It widely differs in connotations in each case. Nuisance as a concept has evolved with time and many jurists have defined it according their understanding. It can be correctly stated that the concept of nuisance is dynamic in nature, and changes according to changes in society. Earlier, mere disturbance or slight noise could come under the ambit of nuisance, but now in certain cases it has been ruled that a person cannot expect a full quiet environment and slight noise caused is not nuisance. It can be assumed from the court’s ruling that now a days one cannot expect a peaceful surrounding at all times, and minimal noise has become part and parcel of the society. While deciding cases now the society in which we are living in is also been taken into considerations.

It can also be fairly said that nuisance does take into account the consequences of the action and does not always go by prima facie evidence. It also examines that whether there was knowledge of the said accident. The ruling in *Rylands v. Fletcher*⁸ can be separated from the concept of nuisance because accumulation of a hazardous object or substance is not required, nor is the exit of the accumulated material required (though this frequently occurs).

In certain cases, both nuisance and negligence go hand in hand, though there is still a lot of confusion regarding the both. If the accused has omitted to take the due care even after having knowledge of nuisance, it also then considered as negligence. It is essential to determine who actually owed the duty of care and till what extent. The defendant cannot be held liable for the services that others are supposed to provide. Nuisance also gives right to an individual if he/she has suffered a loss which is more than what the society has suffered, to file a case individually. Society as a whole plays a very important part in dealing with questions related to nuisance. Sometimes if an individual claims that he has suffered some inconvenience which the society considers a part of their living, then it can be said that he is sensitive and therefore has no claim in nuisance. Private nuisance has gained importance over time as the individuals can exercise sole authority on their property. The courts even allow abatement of injuries or provide injunction orders in order to on restore the plaintiff back to their original position. But a main doubt which comes up is that on how to decide whether an injury is trivial or substantial; as the courts do not take into account minor issues faced by the individual. They expect that the individual tries to resolve the matter on their own or adjust accordingly.

In cases of public nuisance, the courts generally regard the public authorities to take more than reasonable standard of care and carry on their duties properly. However, they are also protected in cases of statutory duty, which might cause inconvenience to a person, but they are held as necessary in order for the development and benefit of the area. The concept of nuisance has evolved over time, and English judgements are quiet frequently referred to decide cases regarding nuisance. The tort law was an English concept, and it was adapted and modified to suit the Tanzanian context. Therefore, now also courts refer to English judgements and old precedents to decide upon a case. A case which prima facie might be held as a case of negligence, might actually be a case of nuisance. The courts generally award an injunction order in order to refrain the harmful activities, or suitable damages is awarded to the plaintiff.

In English cases related to nuisance, we can say that they are stricter in comparison to Tanzanian scenario. What is regarded as trivial sound here, might be considered as nuisance there, since the concept of nuisance originated there, the people are also more aware of it and place the rights in a high pedestal when compared to the Tanzanian society. Since the Tanzanian society is so diverse and secular in nature, that certain situations which might be considered nuisance elsewhere will just be held as part of living. Attempting to maintain the rule of law, fairness,

⁸ *Rylands v. Fletcher*, (1868), LR 3 HL 330

equity, and good conscience, the idea of nuisance has been modified and updated to accommodate diverse ways of understanding it depending on its own regional, social, and economical variety.

2.2.3 Conclusion

Therefore, the term “nuisance” refers to interference with a person's regular life. Almost no codification exists in the area of nuisance law, and there is no aspect criminal aspect to it. A multitude of judgements and the writings of famous jurists gave nuisance as a tort thorough framework. It has progressed greatly with the aid of precedents from the past, guaranteeing fairness and wellness for all parties which may be involved, such as the affected party in the case of private annoyance and society at large in the scenario of public nuisance. The scope and the spectrum of nuisance is wide, and it is a developing concept, which changes in accordance to time and society. It serves to protect individual's interest and the society at large.

3. The Legal and Policy Framework

3.1 Policy Framework

3.1.1 The National Land Policy

The National Land Policy forms the basis of existing Land Laws and addresses, land tenure and administration; Surveying and mapping; Urban and rural land use planning; and Land use management, The classification intends to respond to what the government identifies as sore issues with regards to land matters mainly the value of customary tenures; political pluralism; resolving land conflicts; land speculation, investment and development.

In so doing, the land policy recognizes that land problems are not confined to individual claims to tenure but involve issues such as the economic use of land, rural and urban development, housing, squatting, the quality and security of title, advancement of agriculture and the protection of the environment which all call for a land policy that is holistic and aimed at giving substance to the government's development objective. Accordingly, its overriding concern is stated as “the equitable distribution of and access to land to all”, ensuring that land is put to productive use.⁹ It thus sets out to modify and streamline land management systems and improved delivery systems through institutional arrangement in land administration and adjudication.

But as already noted, the process to formulate the policy occurred parallel with the work of the Land Commission. Consequently, it departs significantly from the premise the Commission adopted, as well as its recommendations. In principle, it agrees that land should be a constitutional category and maintains the right of occupancy system but proposes the Commissioner for Lands, to be the chief administrator of land. Also, that village councils, and not village assemblies, administer land matters in rural areas.

The preface and definition sections set the tone of the policy. The policy, posited as a new turning point in Tanzania's development, is largely patchwork. Consequently, it is loaded with contradictions as will be appreciated in the discussion. Unlike past policies, it is openly market oriented with the investment policy being the major impetus for land alienation and the individualization of titles.¹⁰

Thus, whereas past tenurial system discouraged the emergence of a small landed class by promoting communitarianism, the current policy endorses the individualization of titles. While the Policy sets out to open up land to market forces, it claims concern for the poor.¹¹ Similarly, it resolves to protect risk groups like displaced

⁹ Paragraph 4.2.4 (i)

¹⁰ Although some authors appear to use the terms individualization and privatization of land tenure synonymously, some, like Englert, distinguish the same and argue individualization is not foreign to customary holding systems while privatization is.

¹¹ Paragraph 4.2.12 (iii)

persons, children and the poor against dispositions¹² yet in principle it does not prohibit the market transfer of land.¹³ Essentially it recreates the situation under Cap 113 where customary land rights were not protected against voluntary acquisition for the benefit of foreigners.

The policy, as have subsequent studies, recognize that land in Tanzania is plentiful and hardly used to its full capacity¹⁴ yet the government attributes the population strain and increase in livestock as necessitating changes in the land tenure system. In this regard it makes a link not only with the question of land tenure but also with the economic use of land, environmental protection and rural and urban development. It is however telling that a significant proportion of adjudicated cases involving land disputes involve land areas that are inhabited and held under customary titles. Because the bulk of titles are held under customary ownership, guaranteeing customary land titles equal recognition under the law becomes paramount.

Paragraph 4.1.1.(i)(c) provides that the rights and interests of citizens in land shall not be taken without due process of law. Yet it allows for compulsory acquisition. Also while the consent of the Village Council is required before any alienation¹⁵, in practice their consent is irrelevant. The excessive power of the executive in acquiring land makes the question of consent and due process in land acquisitions redundant.

The policy puts customary land rights at par with the granted right, but restricts the ability of customary landholders to alienate land in order to attract foreign investment in their areas. Its overall focus is on facilitating tenures for urban folks while restricting the security and ability of rural populations in land management and exploitation. In effect, this defeats the whole idea that governance over (rural) land should be with local councils much as it maintains the colonial economic model whereby rural areas are first and foremost seen as agricultural havens and thus not subject to commercial exploitation beyond farming.

The Policy is categorical about land acquisition by non-citizens being in accordance with the law¹⁶ and while it prohibits customary land transfer from citizens to non-citizens, the same is possible through the government. Upon closer scrutiny, such provisions seem to be at odds with the objects of the Land Policy and subsequently the Act in promoting land use for economic purposes. Moreover while the policy sets land ceilings to limit land grabbing and concentration so that more citizens can own land¹⁷, it allows for land grabbing by foreigners in the guise of economic investment. Also, discouraging lateral development in urban areas means that only people with capital will be able to acquire and develop land in urban areas.¹⁸

Additionally, although the Policy sets out an equitable framework to land tenure, the Land Policy does not seek to disturb means through which most customary lands are allocated i.e. through inheritance; nor did it temper with land holding between husband and wife arguing the same was beyond the purview of legislation.¹⁹ Benschop argues that this provision was included to prevent 'family matters' from becoming part of the National Land Policy.

Activist argue that by recognizing custom and tradition in land matters²⁰ it denies women rights to landed property and fails to challenge the ideological and juridical basis upon which land rights and existing patterns of community order are regulated. Fierce protest and lobbying by women's organizations saw this changed, ultimately making gains in the principal legislation by challenging discriminatory practices in land alienation and governance and recognizing spousal co-occupancy. The Land Policy envisages community participation in land planning and use

¹² Paragraph 4.2.12 (iii) of the Land Policy

¹³ Paragraph 4.2.12 (v) 10 See paragraph 1.2 and Tanzania in Figures 2003, pp. 4,5,8 and 9.

¹⁴ See paragraph 1.2 and Tanzania in Figures 2003, pp. 4,5,8 and 9.

¹⁵ Paragraph 4.1.1. (iv)

¹⁶ Paragraph 4.2.4

¹⁷ Paragraph 2.3

¹⁸ Paragraph 6.1.2 (i)

¹⁹ The relevant paragraph 4.2.6, states: "Ownership of land between husband and wife shall not be the subject of legislation". Also see paragraph 4.2.6 (i) and (ii).

²⁰ Paragraph 4.0

²¹ but the unilateral actions of the President, Minister and Commissioner sanctioned by the policy and Land Acts especially with regards to facilitating foreign investments thwart efforts to involve communities in land planning and use.

While land used for agriculture is recognized and included in the category of land used for economic purposes, land used for grazing is omitted as if livestock breeding is not an economic enterprise that is land intensive with environmental consequences.

In essence, the Land Policy rejects the Land Commission's proposed institutional framework and instead adopts a framework that centralizes and concentrates power over land control and administration in the executive not the populace (4.2.14; 4.2.16).

The policy is very vague with regards to dispute settlement machinery and fails to make a rigorous analysis of the effectiveness of bodies concerned with dispute settlement on nuisance.²² Yet a fundamental problem with land administration is with the systems and mechanisms to require and ensure accountability where the executive is the sole administrator and arbiter of its own decisions and actions. The author has examined additional various policies that are incorporated in realisation of nuisance in Tanzania as briefly discussed hereunder below.

3.1.2 National Environmental Policy, 1997

The Policy provides the framework for making fundamental changes that are needed to mainstream environmental considerations into decision making in Tanzania. The policy provides guidelines for determining priority actions, and provides for monitoring and regular review of policies, plans and programmes. It further provides for sectoral and cross-sectoral policy analysis in order to bring synergy and harmony among sectors and interest groups.

3.1.3 Sectoral Policies

There are several sectoral policies that support environmental management in Tanzania. Such policies are developed, not only to address challenges in respective sectors, but to include provisions to address environmental matters in relevant sectors.

3.1.3.1 National Land Policy, 1995

The National Land Policy of 1995 aims at developing a coherent and comprehensive framework that defines land tenure and enables proper management and allocation of land in urban and rural areas. Among other things, the Policy advocates the protection of land resources from degradation, for sustainable development. The policy addresses several environmental issues such as land use planning, which take into consideration the land capability, ensures proper management of land resources, promotes resource sharing and multiple land use techniques in areas of conflicting land use, and involve community in resource management, land use and conflict resolution.

²¹ Paragraphs 6.8.1 (ii) and (iv) as well as 8.2.0 and 8.2.1 (iii)

²² Paragraph 4.2.26

3.1.3.2 Sustainable Industrial Development Policy, 1996

The Policy provides for sound environmental management in order to ensure promotion of environmentally friendly and ecologically sustainable industrial development. The Policy insists that environmental audit and appropriate mitigation measures should be enforced for all industrial projects at pre-implementation stage.

3.1.3.3 Fisheries Sector Policy and Strategy Statement, 1997

The policy acknowledges the linkage between the sustainable exploitation of fish resources and the provision of high quality food, income and employment. Though the linkage between poverty and environment is recognized, the role of poverty as a constraint to sustainable management of fisheries resources, or possibility of developing positive environment/poverty linkages, is not highlighted in the policy.

3.1.3.4 National Forest Policy, 1998

The overall goal of the National Forest Policy (1998) is to enhance the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of her natural resources for the benefit of present and future generations. The Policy, among other aspects, recognizes the high value of forests due to the high potential for royalty collection, export and tourism earnings as well as the recycling and sequestering of carbon and conservation of globally important biodiversity. Furthermore, the policy emphasizes on biodiversity conservation; describes the importance of forest ecosystems for maintaining biodiversity and the threats to biodiversity. One of the main objectives envisaged in the policy focuses on ensured ecosystem stability through conservation of forest biodiversity, water catchments, and soil fertility.

3.1.3.5 National Tourism Policy, 1999

The Policy acknowledges the relationship between the environment and development of sustainable tourism. The aim of the policy is to ensure that development of tourism is based on careful assessment of carrying capacities of tourism products and ensure enhancement and improvement of special environment features in order that tourism development does not conflict with indigenous forests, beaches, mountains and other important vegetation.

3.1.3.6 National Human Settlements Development Policy, 2000

The Policy stresses on the need for ensuring that human settlements are kept clean and pollution effects of solid and liquid wastes do not endanger the health of residents. The policy advocates for a set of environmental quality standards of gaseous emissions from industries and vehicles.

3.1.3.7 National Water Policy, 2002

The main objective of the Policy is to develop a comprehensive framework for sustainable development and management of the nation's water resources. Specifically on the environment the objective is to have a water management system that protects the environment, ecological system and biodiversity. The policy emphasizes that water related activities will have to be planned to enhance or to cause least detrimental effects on the environment. In order to protect ecological systems and biodiversity which, together, are important part of sustainable water resources system the policy provides a guide for determining water for the environment, in terms of quantity and quality, and levels, for both surface and groundwater resource. The policy emphasizes the use of best available scientific information for both temporal and spatial water requirements to maintain the health and viability of riverine and

estuary ecosystems, and associated flora and fauna. Public awareness on good land-use practices is insisted in order to contain the erosion problem.

3.1.3.8 National Energy Policy, 2003

The Policy, among others, focuses on utilization of various energy resources in a sustainable and environmentally friendly manner. The Policy recognises, that energy is a prerequisite for the proper functioning of all sub-sectors of the economy. The Policy stresses the use of renewable and alternative energy sources such as wind, solar, mini-hydropower generators and use of liquefied petroleum gas (LPG) as well as natural gas. The use of alternative energy sources such as biogas, briquettes both for domestic and industrial uses is encouraged to minimize the use of charcoal and firewood to prevent massive deforestation.

3.1.3.9 National Livestock Policy, 2006

The policy objective on the environment is to ensure the environment is conserved for sustainable livestock production. The policy highlights on sustainable livestock farming and its related activities that require proper utilisation and management of the environment. The policy recognises that increased livestock populations and human activities related to livestock production in some areas of the country have resulted in over exploitation of natural resources. This has led to over-grazing, soil erosion, deforestation, destruction of water sources and environmental pollution. In order to achieve the policy goals on environmental management the policy seeks to strengthen technical support services on environmental issues, promote proper land use planning for livestock production and strengthen inter-sectoral coordination on environmental issues.

3.1.3.10 National Population Policy, 2006

The Policy recognizes the impacts of population growth on natural resources and environment. The policy goal is to prepare and implement coordinated urban, rural and regional development plans for rapid development in the country and to reduce the rate of rural-urban migration.

3.1.3.11 Wildlife Policy, 2007

The Policy focuses on wildlife protection and conservation in order to ensure sustainability of wildlife ecosystems. Some of the objectives of the Policy include establishment, maintenance and development of Protected Areas network in order to enhance biological diversity; conservation of wildlife and its habitats outside the core areas by establishing Wildlife Management Areas (WMAs); and conservation of Wetlands.

3.1.3.12 National Health Policy, 2007

The overall objective of the National Health Policy, 2007 is to improve the health and well-being of all Tanzanians. In line with environmental health, Policy seeks to protect community health by enhancing sustainable environmental health. The Policy emphasizes on community adherence to environmental health standards; Improvement of waste management systems including disposal of hospital wastes; educating health service providers on the importance of environmental health in their working areas; and putting in place laws and procedures for conservation and protection of the environment in the health sector.

3.1.3.13 Mineral Policy of Tanzania, 2009

The objective of the Mineral Policy of Tanzania on environment is to reduce or eliminate adverse environmental effects of mining, by promoting health and safety conditions in mining areas and addressing social issues affecting local communities. It requires mining operations to carry out EIA and directs mining companies to set aside funds for environmental rehabilitation and mine closure obligations.

3.1.3.14 National Irrigation Policy, 2010

The objectives of the National Irrigation Policy on environment include promotion of efficient water use in irrigation systems, and ensure that irrigation development is technically feasible, economically viable, socially desirable and environmentally sustainable. The Policy aims to have irrigation systems that are environmentally sound by ensuring compliance to relevant legislation; protecting and conserving water and land sources; pollution control in irrigated agriculture and promotion of proper land use practices.

3.1.3.15 National Biotechnology Policy, 2010

The general objective of the National Biotechnology Policy is to ensure that Tanzania has the capacity and capability to capture the proven benefits arising from health, agriculture, industry and environmental applications of biotechnology while protecting and sustaining the safety of the community and the environment. The Policy reiterates the importance of conservation and utilization of plant, animal and microorganism genetic resources. The Policy emphasizes that the narrow pool of the biodiversity is under constant threat of extinction due to various human activities leading to environmental pollution and climate change. Therefore, the need to sustainably conserve and utilize the national genetic resources is important and urgent. In order to sustainably conserve and utilize genetic resources, the Policy seeks to promote sustainable utilization of genetic resources and create public awareness on the value of genetic resources for food and agriculture.

3.1.3.16 National Agriculture Policy, 2013

The Policy aims to develop an efficient, competitive and profitable agricultural industry that contributes to the improvement of the livelihoods of Tanzanians and attainment of broad based economic growth and poverty alleviation. With regard to environmental management, the Policy aims to promote agricultural practices that sustain the environment. To achieve this, the Policy outlines policy interventions including sustainable environmental early warning and monitoring systems; improving adaptation measures to climate change; public awareness on sustainable agriculture; and enforcing relevant environmental laws and regulations.

3.2 The Legal Framework

This part sets out the legal framework governing land and is divided in three sections. It begins with a general comment on the legal framework and then proceeds to highlight salient features of the legislation and its subsequent amendments with particular emphasis to questions of gender, the rights of rural land users mainly farmers and pastoralists. Next, it addresses the issue of land acquisitions and examines the institutional framework for adjudicating land matter.

3.2.1 The Laws

The National Land Policy was the basis for the subsequent drafting of the Land Act Bill in 1998, which ultimately formed the basis of the new Land Laws.²³ The Acts maintain the dual land tenure system: statutory or granted rights of occupancy on the one hand, and customary rights of occupancy on the other hand, with the difference that customary land rights are no longer „deemed“ but now also „granted“, therefore with equal status and effect.²⁴ Land is still centrally managed with the Commissioner of Lands exercising full control. Procedures pertaining to land matters are detailed in the 2001 Land Regulations.

Public land is divided into three categories: (a) general land: all land that is not village or reserved land; (b) village land; land within the jurisdiction of a village, and (c) reserved land which includes forests, national parks, and land reserved for public utilities. This categorization aims to facilitate land management, allocation, and administration but it is not uncommon to find provisions relating to Village Lands and customary titles in the Land Act and vice versa.²⁵ Land can be transferred from one category to another, as it is still liable to acquisition for public interest.²⁶ Similarly, titles can be revoked on a number of grounds. Payment of compensation is, however, provided in case a right of occupancy is acquired.

The market aspect of the Acts comes across clearly as land, leases and mortgages in land become auctionable and transferable. Likewise, both acts recognize the prevalence of corruption and attempt to put in place measures to stop people engaged in corrupt practices from benefiting from corrupt transaction.²⁷ What amounts to a corrupt act is however not defined nor is reference made to the principal legislation related to corrupt practices.

There are still some loose ends in the Acts. Foremost, there are a number of provisions in laws related to land matters that are yet to be amended or repealed. The relevant principal and subsidiary legislations are detailed at length in Chapter 23 of the Land Commission's Report. Moreover, a number of prior provisos in the Act are in contradiction with the latest amendment, such as the time holders of customary right of occupancy are required to move. Also, the 2001 Act talks of small mortgages but the 2004 Amendments in repealing Part X got rid of the language, though other provisions still use the term. Sections 56(2) (f) and 57 (3) of the VLA makes reference to S. 57 (2) but the section is not in the legislation.

3.2.2 The Land Act, Act No. 4 of 1999

The Land Act is divided into fourteen Parts and 186 sections and applies to public lands, which consists of general land, village land and reserved land.²⁸ Part one and two are the introductory sections. Part four provides for the classification and tenure of land. Land administration is outlined in Part V, and lays responsibility over land matters squarely on the Commissioner for Lands.²⁹ Likewise, it provides for Land Allocation Committees, appointed by the Minister at central, urban and district authorities. Supervision over land matters is the responsibility of the Minister for Land who is advised by the Land Advisory Council.³⁰

Rights and Incidents of Land Occupation are provided for under part V.³¹ Most importantly, it describes the attributes of a granted right of occupancy, which in case of the Land Act occurs on surveyed general or reserved land. Moreover, a granted right of occupancy is liable to revocation, compulsory acquisition and is subject to prescribed

²³ Section 3 of the Land Act (LA) and the Village Land Act (VLA) acknowledge this much

²⁴ Section 18 of VLA

²⁵ E.g. § 53 (1) of LA

²⁶ Section 5 of LA and §§ 4 and 5 of VLA

²⁷ Sections 24 (5) and 64 of VLA

²⁸ Section 4

²⁹ Sections 9 and 10 of LA in line with Paragraph 4.2.2 (1) of the Land Policy. However, the term “sole authority” is used whereas it may be more appropriate to substitute it with supreme authority in view that other institutions administer land in varying capacities.

³⁰ Section 17 (4)

³¹ This part has been amended by the 2004 Act.

conditions.³² The procedure to apply for a right of occupancy is outlined in Part VI and can be issued for a period up to 99 years.³³ Where land is occupied without title or right within a jurisdiction, a residential license may be issued.³⁴

Occupancy is legalized by the issuance of a certificate of occupancy³⁵ preceded by an offer.³⁶ In addition to development conditions, land occupation attracts rents and a number of taxes.³⁷ The Act claims to and no longer requires the consent of the commissioner before disposition of a right of occupancy, unless the same concerns an assignment of a right of occupancy that is less than three years, a loan or lease granted as security, a notification being sufficient.³⁸ Nonetheless, it still requires one to obtain approval to be operative.³⁹ A radical departure introduced by the 2004 Act to this part is the recognition of sale of bare land discussed at length below.

3.2.3 The Village Land Act, Act No. 5 of 1999

The Village Land Act consists of six parts and 66 sections. Village land is divided into 3 categories (a) communal village land for communal and not individual use; (b) land used or occupied by an individual or family under customary law; and (c) vacant land, which may be allocated for communal or individual use.⁴⁰ As aforementioned, the Act declares customary titles at par with granted rights of occupancy. Therefore, a lease and a sublease can be granted out of a customary right of occupancy i.e. “customary leases”.⁴¹ A customary right of occupancy is inheritable and transmissible by will.

Section 7 of the Village Land Act defines “village land” to include lands that are registered under section 22 of the Local Government (District Authorities) Act or those designated by the Land Tenure (Village Settlements) Act, 1965 or any other law or procedure. The law empowers the village council to allocate (and manage) parcels of village land or grant customary rights within the village to individuals, households, clan, community, or other lands and their adjudication, registration and titling.⁴²

Accordingly, a village council is responsible to maintain the certificate of village land.⁴³ Moreover, the Council is obliged to take into consideration factors that will ensure sustainable development and the balance between land use and its effect on the environment as well as on natural resources on village land.⁴⁴ The powers of allocation of village land by the Village Council is, however, subject to the approval of the village assembly, the supreme authority on all matters of general policy making in relation to the affairs of the village.⁴⁵

An effort is made to deal with the consequences of Operation Vijiji, which took place between 1970 and 1977.⁴⁶ The Act stipulates that an allocation of land to a person or group of persons under this Operation is confirmed to be a valid allocation, extinguishing any previous rights in that land. In many other respects it is to be read with the Land Act.

³² Section 22 (1) a-k

³³ An applicant can be granted a lease of 33, 66 or 99 years.

³⁴ Section 23

³⁵ Section 29 (1)

³⁶ Section 27 and 28

³⁷ Sections 33 and 34

³⁸ Section 36

³⁹ Section 37 (5)

⁴⁰ Section 12

⁴¹ Section 19

⁴² Detailed in section 8

⁴³ Section 7(8) while the Commissioner of Lands maintains a register of village land under section 7(10)

⁴⁴ Section 8 (3) (a)

⁴⁵ Section 8 (5) 43 & 15

⁴⁶ Section 15

3.2.4 The Land (Amendment) Act, 2004

The Land (Amendment) Act 2004 makes a few but significant amendments to the Land Act 1999. The Objects and Reasons section introducing the amendment makes clear that they seek to strike a real and more practical balance between interests of the mortgagor and mortgagee such that property based lending by financial institutions is encouraged. Thus, the amendments allow and regulate the sale of undeveloped land, an innovation in the law. Another important development in the law is the introduction of the principles of the LMA in so far as protecting a spouse's interest in the matrimonial home in case of a mortgage or sale.

In many cases, the amended (or repealed) sections have actually been retained, changed only in terms of arrangement or language with the effect of making the amendment less verbose, shorter in length and sharper. This, however, may also be due to the fact that the typesetting and font used in the Amendment is more decisive than that used in the principal legislation, which may suggest the haste in which it was initially prepared.

3.3 Land, Gender and the Rights of the Marginalised

3.3.1 Women and Land Rights in the 1999 Legislation

The rights of women to, acquire, hold, use, and deal with land to the same extent and subject to the same restrictions as a right of any man is explicitly recognized in the law.⁴⁷ A Village Council may not adopt adverse discriminatory practices or attitudes towards women, who have applied for a customary right of occupancy.⁴⁸ In this respect, the Tanzanian legislation is perhaps the most progressive in the East Africa region.

A number of provisions exhort equal treatment between men and women in so far as acquiring land, even land held under customary titles or when applying customary law;⁴⁹ loans, leases, assignment or mortgages;⁵⁰ and their representation in public bodies related to land matters is assured through direct elections or affirmative action. However, the text in the Acts is still rated as gender biased in favour of men.

The most important part of the Land Act for women is Part XII, dealing with co- occupancy and partition. Section 159 (1) defines co-occupancy as "the occupation of land held for a right of occupancy or a lease by two or more undivided shares." Co- occupancy exists in two forms:

- (a) *Joint occupancy*: where the land as a whole is occupied jointly under a right of occupancy or a lease, and no occupier is entitled to any separate share in the land.⁵¹
- (b) *Occupation in common*: where each occupier is entitled to an undivided share in the whole. An occupier in common must have the consent of the remaining occupier(s) before s/he can deal with her/his undivided share in favour of any other person.

Under the Act, joint occupancy can only be created between spouses, but spouses can be presumed to occupy in common.⁵² Any two or more persons can occupy land together under a right of occupancy, either as joint occupiers or occupiers in common depending on how the co- occupancy is registered.⁵³ All co-occupiers must agree to any disposition, freely and without undue pressure.⁵⁴ Each co-occupier is entitled to a copy of the certificate of occupancy.⁵⁵

⁴⁷See Section 3(2) in the LA and VLA.

⁴⁸Section 23 (2) (c) (i and ii) of the VLA

⁴⁹Sections 20 (2); 23 (2) (c); (30 (4) (b), (35) (2)

⁵⁰Section 19 of VLA and §§ 141 and 142(1)(d)(ii) of Land (Amendment) Act 2003

⁵¹Section 159(4)

⁵²Sections 159(8) and 160(1) respectively. The presumption of co-occupancy applies to both a granted right and customary occupancy.

⁵³Section 159 (2), (3) and (7) of the LA

⁵⁴Section 159(6) of the LA

⁵⁵Section 160(1) of the LA

The Law of Marriage Act of 1971 recognizes the right of married women to acquire, hold and dispose of property. Married women can also enter into contracts and can sue or be sued in their own name. Further, the law provides for distribution of property upon divorce, not death in which case the law of succession applies. In suit of the LMA, the Land Act stops the spouse who owns the matrimonial home from alienating the same while the marriage subsists absent the consent of the other spouse.⁵⁶ Upon death the share of an occupier is liable of being inherited.⁵⁷ Activists hope that the obligation to register the spouses as occupiers in common will help to ensure that women's name is actually written on the certificate of occupancy. Training of all officials that deal with land matters, such as allocation and registration is therefore crucial in this respect.

3.3.2 Land Rights of Pastoralists and Peasants under Act No. 4 and 5 of 1999

Land use in rural areas is provided for under part IV of the Village Land Act. Pastoral land has not been recognized as a specific category of reserved land as demanded by activists,⁵⁸ but the Act recognizes their claim to a customary right of occupancy.⁵⁹ Additionally the Act recognizes land-sharing schemes between farmers and pastoralists. Shauri argues that reserved areas for natural resources management at village level can be created from the category of communal village land. Farmers and pastoralists can thus apply for the use of communal land.

The earlier version of the Land Bill provided for pastoralism in three ways; first, by the creation of corporate farms under which pastoralists may organize themselves, with supervisory powers over these entities entrusted with the Administrator General. Also, statutory pre-conditions are set-out to meet the requirements of pastoralists when decisions on land management are made including mechanisms for conflict resolution in cases where their interests collide with those of other land users. Provision is made for an inter-village mechanism for reaching land use agreements.

NGO's working with pastoralists, however, were unimpressed by the provisions, which they felt would have little positive impact on their constituencies, especially in light of the earlier abuse of pastoral schemes. They felt the needs of pastoralists were given little consideration. For instance, while the land needs of pastoralists are above those of ordinary peasants or urban dweller, a similar limit of land holding of 2,500 hectares was imposed on them prompting groups to call for the Bill to be revised to better address issues of tenure related to pastoralists. It is also notable that while Tanzania has one of the highest population on livestock in Africa, the economic potential of livestock breeding as an industry is not emphasized. The policy framework seems to favour breeding in ranches while the government does not have a good record in running such endeavours.

3.4 Land Acquisitions

3.4.1 Acquisitions under 1999 Acts

Land can be acquired for public interest under the Land Acts. As observed earlier the President can transfer one category of land to another i.e. General Land to Village Land; Village Land to General Land; or General Land to Reserved Land.⁶⁰ Both the granted right of occupancy and the customary right of occupancy can be compulsory acquired. There is a greater possibility for village land to be acquired by the executive, moving it from the jurisdiction

⁵⁶ Section 59 of the LMA. Also, Sections 112 (3) (a), 114 (4) and 138 (2) (b) of the LA and 35 (7) (c) (i) of VLA. However, section 114 (2) (a) and (b) does not make it clear if a relationship operating under the presumption of marriage enjoys the same protection as a solemnized but unregistered marriage.

⁵⁷ Section 159(3) (b) and (5).

⁵⁸ According to Mekacha Pastoralists demanded for community rights in land ownership in form of reserves but § 6(1) does not include pastoral lands as part of reserve land.

⁵⁹ Sections 7 (7) and 20 (4) (d)

⁶⁰ Section 5 (7) (8) and (9) of LA and § 4 and 5 of VLA

of the Village Council such as by allocating it to non-village organisations⁶¹ or to foreigners under the National Investment (Promotion and Protection) Act 1990.⁶²

Village Land Act qualifies the application of Part III of the Land Acquisition Act relating to development areas. Land can be acquired under a regularisation scheme;⁶³ or in the event of the termination of an assignment of a customary title of occupancy;⁶⁴ in case of revocation of a customary right of occupancy;⁶⁵ or for breach of condition including abandonment; or to affect an order for possession.⁶⁶

In effect, land is not only acquired by the State as the supreme landlord but the commodification of land also means that lenders can invoke the legal system to recover their security on loans or mortgages. Of concern for activists is the ability of the mortgagee to lease, enter into possession, or to sell the mortgaged land upon serving the mortgagor thirty days' notice after which time the mortgagor should discharge the mortgage. A mortgagee may claim remedies available under the Act.

The court is to provide a balance with regards to a domestic dwelling, agricultural land, pastoral land, land subject to a small mortgage or land subject to customary mortgage but only in so far as it has ascertained itself of the mortgagor's ability to pay in due time.⁶⁷ Eventually, it will have to grant the mortgagee the relief's sought. Thus the distinction made between a mortgage as conveyance or as security is of no consequence since it entitles the mortgagee to some relief, which relief threatens the proprietary rights of the mortgagor. The bulk of directives on acquisitions are contained in the Land Acquisitions Act discussed below.

3.4.2 The Land Acquisition Act, Act No. 47 of 1967

The Act is divided into four parts and 41 sections. The longest part deals with compulsory acquisitions, compensation and related matters. The Act empowers the President to acquire any land for any public purpose⁶⁸ including environmental purpose, public works, a developmental purpose, or resource exploitation.⁶⁹

Minimum compensation is allowed under the Act,⁷⁰ an approach also adopted in the 1999 Land Acts.⁷¹ But whereas the initial Act did not allow for compensation for bare land current amendments do as they legalize the sale of bare land.⁷² In many respects, the government did not want to be responsible to meet any obligation towards any party who may have suffered from the compulsory acquisition and refuses to take into consideration any improvement or work done on or to be done on the land or the future value of the land.⁷³

3.4.3 Available Relief for Acquisitions

Section 173 the Land Act establishes a Land Compensation Fund to provide compensation to any person should they suffer any loss, deprivation or diminution of any rights or interests in land or injurious affection in respect of any occupation of land or its use.⁷⁴ Part III of the Village Land Regulation 2001 provides for compensations. Under Regulation 20 of the Land (Management of the Compensation Fund) a right to compensation is inheritable. Additional

⁶¹ Section 17 (1) (2) and (3) of VLA

⁶² Amended in 1992.

⁶³ Section 59 (2) of LA

⁶⁴ Section 30 (2) (c) of the VLA

⁶⁵ Section 44, 45 and generally and 45(9) in particular of the VLA

⁶⁶ Section 74 (1) (e) and 130 of LA

⁶⁷ Section 140 (5) and (6) revise

⁶⁸ Section 3

⁶⁹ Section 4

⁷⁰ Generally §§ 11- 18

⁷¹ E.g. Section 156, which provides for compensation in respect to public right of way.

⁷² Section 12

⁷³ Section 14 (a) and (d) respectively

⁷⁴ Section 56 compensates public ways. Regulations in respect to the VLA are made under Section 65. A person can apply for relief from court against any act of the Village Council or authorities under § 46.

protection is afforded to buyers or landowners who lose their interest to land by a sale that is rescinded, through fraud by voiding such transaction or disposition.⁷⁵ One can always appeal against an aggrieved decision relating to land occupation and use.

Compensation for compulsory acquisitions may be monetary or may entail relocation or alternative allocation. Items liable for compensation include the value of unexhausted improvement, disturbance allowance, allowance for transport and accommodation; and loss of profits. The Land Regulations do not provide for compensation for unoccupied land.⁷⁶ Thus there is a real likelihood that undeveloped plots of land, such as used for grazing, will not be compensated for the acquisition.

3.4.4 Adjudication

Part XIII of the Land Act, comprises of a single section, and Part V of the Village Land Act deal with dispute settlements. Organs having exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land are the Court of Appeal, the Land Division of the High Court, the District Land and Housing Tribunals, Ward Tribunals and Village Land Councils.⁷⁷

The Commissioner for Lands is empowered to make major determinations with regards land matters.⁷⁸ He may also commission an inquiry on land matters, which operates like a judicial proceeding.⁷⁹ The Village Land Council is empowered to mediate on matters concerning village land and recognizes the use of customary land law.⁸⁰ The Council can establish a Village Adjudication Committee whose members are elected by the Village Assembly consisting of nine persons, four being women.⁸¹

The Local Customary Law (Declaration) Order No. 4 of 1963 is the major source of codified customs readily invoked by courts. Section 20(1) directs that any dispute relating to a customary right of occupancy, including a dispute on succession or inheritance will be determined in accordance with customary law but does not specify which customary law to be used. Before granting customary rights of occupancy, boundaries and interests in land must be determined.⁸²

4. Summary of the Findings of the Study

The real problem with the policy framework for managing nuisance (noise, pollution, waste, etc.) in Tanzania is not a total lack of laws, but rather a combination of fragmented, outdated sectoral policies, limited institutional capacity for enforcement, and the prioritization of investment over environmental health. While the *Environmental Management Act (Cap. 191)* and specifically the *Environmental Management (Standards for the Control of Noise and Vibration Pollution) Regulations of 2015* exist, the implementation remains largely ineffective, particularly in urban areas. Here are the key aspects of the research findings regarding nuisance policy in Tanzania:

4.1 Fragmentation and Overlapping Jurisdictions

Environmental management is handled by a “plethora of laws”.

⁷⁵ E.g. section 71, 75 of the LA

⁷⁶ Regulation 12 of the Land (Assessment of the Value of Land for Compensation) 2001

⁷⁷ Section 167(1) of LA and Section C of Part of the VLA.

⁷⁸ Section 10 (5)

⁷⁹ Section 18

⁸⁰ Section 60

⁸¹ Section 53

⁸² Section 48

- (a) *Sectoral Conflicts*: Nuisance management is split between local government authorities, the National Environmental Management Council (NEMC), the police, and sectoral ministries (mining, transport, agriculture). This fragmentation leads to conflicting regulations and confusion over which authority has the mandate to act.
- (b) *Lack of Unified Approach*: There is no comprehensive national framework to manage urban nuisances like air quality or neighborhood noise systematically.

4.2 Ineffective Enforcement Mechanisms

Even when regulations exist, they are not properly enforced due to several factors:

- (a) *Capacity Constraints*: Regulatory authorities, particularly at the local government level, lack the personnel, technical equipment (e.g., sound level meters), and training needed to monitor and enforce compliance.
- (b) *High Cost of Compliance*: For many small businesses and industries, compliance with environmental standards is too expensive, leading to widespread illegal activities.
- (c) *Weak Penalty Structure*: Many older laws are penal in nature but impose penalties that are too low to act as a real deterrent to violators, meaning many simply pay a fine and continue to produce nuisance.

4.3 Conflicts Between Development and Environment

- (a) *Investment Priority*: In many cases, government efforts prioritize economic growth and industrial investments over environmental protection. This results in "non-enforcement" of laws against investors who generate high levels of noise, waste, or pollution.
- (b) *Rapid Unplanned Urbanization*: Rapid urbanization has resulted in mixed-use areas where bars, factories, and religious institutions operate in residential zones, creating high levels of public nuisance that, while reported to NEMC, are often not resolved.
- (c)

4.4 Poor Integration of Public Participation

- (a) *Top-Down Management*: Policies are often developed and implemented without significant involvement of local communities, leading to lack of awareness and ownership of the regulations.
- (b) *Difficulty in Reporting*: Reporting mechanisms for citizens are often complex, requiring citizens to prove they have suffered "special damage" over and above the general public to get court action.

4.5 Specific Gaps in Regulations

- (a) *Delayed Regulations*: For many years, the 2004 Environment Act was deemed weak until the 2015 Noise regulations were introduced; however, enforcement of these new regulations has taken years to take hold.
- (b) *Noise Environment*: Despite the 2015 regulations, high-volume music in bars, worship places, and roadshows continues, indicating that even updated laws face resistance in application.

In summary, the problem is a compliance and implementation gap, where a strong, centralized legal structure (like EMA 2004) is undermined by weak, uncoordinated, and under-resourced local enforcement.

However, the further findings show that establishing liability for nuisance in Tanzania involves complex legal, procedural, and institutional challenges. Under Tanzanian law, nuisance is an unlawful interference with a person's use or enjoyment of land, which must be both substantial and unreasonable. Findings opined that claimants face significant hurdles in proving these elements, particularly regarding ongoing interference, identifying the responsible party, and maneuvering through the land dispute settlement machinery. Key difficulties in establishing liability of nuisance in Tanzania include:

4.6 Requirement of “Substantial and Unreasonable” Interference

- (a) *Locality Factors*: Courts determine reasonableness based on the character of the neighborhood. Establishing nuisance is harder in industrial areas, as residents must tolerate a higher level of interference (e.g., fumes, noise).
- (b) *Abnormal Sensitivity*: The law does not protect overly sensitive plaintiffs. If the interference only affects a delicate, specialized business (e.g., specific manufacturing), it may not be considered a nuisance.
- (c) *Continuity*: A single, isolated incident usually does not qualify as a nuisance; the interference must be a continuous state of affairs.

4.7 Legal Standing (Locus Standi) and Proof of Ownership

- (a) *Interest in Land*: Only those with a proprietary or possessory interest in the land (owner, tenant) can sue for private nuisance.
- (b) *Proving Possession*: Plaintiffs must prove they have actual possession or ownership of the land, which can be difficult in areas with unregistered customary tenure, particularly when relying on verbal evidence.

4.8 Evidential and Procedural Challenges

- (a) *Proving Damage*: While physical damage to property is easier to prove, non-tangible injuries like smell or noise require high standards of evidence.
- (b) *Causation*: It can be difficult to prove that a specific neighbor's activity is the direct cause of the discomfort.
- (c) *Incompetent Pleadings*: Many cases are dismissed due to incompetent complaints, such as lack of a clear property description, which makes it hard to establish the exact area of interference.

4.9 Defence of Statutory Authority and Prescription

- (a) *Statutory Authority*: Defendants often escape liability if they can prove their activity (e.g., a factory or public project) is authorized by statute, provided they took reasonable care to minimize the nuisance.
- (b) *Prescription*: A continuous, open, and peaceful nuisance that has existed for 20 years or more can become a legitimate right, defending the wrongdoer.

4.10 Institutional Constraints

- (a) *Delayed Justice*: Land tribunals are often slow and inefficient, leading to increased land disputes that overburden the system.
- (b) *Inaccessible Land Administration*: Land registries are often centralized (e.g., zonal offices), making it difficult for rural residents to access records and documents needed to prove their case.
- (c) *Weak Land Dispute Resolution in Rural Areas*: Village land councils often struggle with capacity, which can hinder the timely resolution of local nuisance claims.

4.11 Public versus Private Nuisance Hurdles

A private individual can only sue for public nuisance (e.g., obstruction of a highway) if they suffer “special damage” over and above that suffered by the general public. Proving this distinction is often complex.

4.12 Nuisance versus Trespass

Nuisance should be distinguished from trespass. Trespass is a direct physical interference with the plaintiff's possession of land through some material or tangible object. The points of distinction between nuisance and trespass are as follows: - If interference is direct, the wrong is trespass, if it is consequential, it amounts to nuisance. Planting a tree on another's land is trespass. But when a person plants a tree over his own land and the root or branches project into the land of another person that is nuisance; to allow a stone from a ruinous chimney to fall upon those premises is the wrong of nuisance.⁸³ While trespass action protects against an invasion of one's right to exclusive possession of land, for example where a land owner drops a tree across her neighbours boundary line thereby liable for trespass, he/she may be liable for nuisance where however, her dog barks all night keeping the neighbour awake.

5. Difficulties in Establishing Liability in Tort of Nuisance in Tanzania

It must be self-evident that not every interference with the claimant's use and enjoyment of land can amount to a private nuisance. There are challenges in tort of nuisance and it arise when there is need to prove that there is a nuisance was committed by a defendant and here the difficulties beginning, among of the factors cause the establishment of liability being tough and difficulties are;

5.1 Difficulty to Prove Unreasonable Interference

The requirement that interference must be "unreasonable" is highly subjective in tort of nuisance. The court applies a give and take principle, checking if the use of land was reasonable according to the context of the locality example residential compared to the industrial area, utility of the defendant's conduct, and societal norms. The interference must be serious, not trivial. Thus, why what is unreasonable in a residential area may be acceptable in an industrial zone. This leads to inconsistent judicial outcomes. It allows courts to prioritize economic development over individual rights, especially in Tanzania's industrializing economy.

In various cases before the court many peoples (claimant/plaintiff) they fail to prove if there is interference which is unreasonable and unlawful, and such interference it goes against with the principle of using your property or right without cause annoyance or disturb the right of other people. So, determining *unreasonable interference* is inherently subjective. Courts use a multi-factor test to determine if an interference is "unreasonable" among of it is:

5.2 Duration and Frequency

The interference is usually expected to be a continuing state of affairs, rather than a one-off event example, chronic, incessant noise is worse than one loud party.

5.3 Time of Day

Activities that are acceptable during the day (construction, loud music) may be unreasonable at night. Even presence of loud music at night it amount to nuisance. The difficult come because plaintiff required to prove the exactly time; sometimes it becomes tough because of the repetition of the act so to know what time interference occur may be a problem.

However, even if the interference is deemed serious, holding a defendant liable can be difficult due to several factors:

5.4 Requirement of "Continuing" Nuisance

In nuisance isolated acts are rarely considered private nuisance. The actions for private nuisance arise when there has been continuous interference over a period of time with the claimant's use or enjoyment of land.⁸⁴ According

⁸³ Salmond. J.W, (1965). *Salmond on the Law of Torts*, RFV Heuston 14th edn, Sweet & Maxwell, p. 72

⁸⁴ Harpwood, V. (2000). *Principles of Tort Law*, 4th ed, Cavendish Publishing, United Kingdom, p.237

to the case of *Geofry Mulungu and another (supra)* A single act giving rise to a complaint will not normally constitute private nuisance, though it could be a public nuisance. In claiming arising from a tort of private nuisance the claimant has to prove that, there was a continuous interference of enjoyment of the land. The reason behind this requirement was stated in the case of *Geofrey Mulungu* at page 07 the court said that a single act giving rise to a complaint will not normally constitute private nuisance as can be remedied at a very low cost depending on its gravity and unreasonableness, thus a need to prove its continuity.

The Court, in the case of *Suleiman Ryoba Chacha V. North Mara Gold Mine Ltd* state that there is a common legal principle that he who allege must prove. This principle is derived from section 117, 118, and 119 of the Evidence Act Cap 6 R.E 2023.

Although there are no time limitations for gauging such time of continuity as that will depends on the circumstances of each case, as even a single action if proved to be substantial though existed for a short period of time might be actionable in law. So, to prove unreasonable interference it's a challenge because of technicality issues before the Court.

5.5 Plaintiff Coming to the Nuisance

While not a complete defense, courts may view a case less favorably if the plaintiff moved next to an existing, known activity, such as a factory or farm. This is used obviously in various case and the defendant are released and continues to cause nuisance to the people around him or her.

5.6 Utility of Conduct

If the defendant is providing a beneficial service to the community (e.g., a hospital's ambulance noise, a power substation), the court may allow it even if it causes discomfort. Vivienne Harpwood in her book named *Principles of Tort Law*⁸⁵ observed that "An action for private nuisance arise when there has been continuous interference over a period of time with the claimant's use or enjoyment of land." In *Delaware Mansions Ltd V. Westminster CC* (1999), the Court of appeal held that a local authority had a duty to abate a nuisance caused by trees' roots undermining the foundations of a block of flats. That duty was not nullified simply because the damage had occurred before the freehold interest was obtained. There is no set period of time over which the events must occur to amount to a private nuisance. Always depends upon the neighborhood and the other surrounding circumstances. Temporary interferences do not usually amount to actionable nuisance. However, a temporary, but very substantial state of affairs may amount to a nuisance, as it was held in the case of *De Keyser's Royal Hotel Ltd V. Spicer Bros Ltd* (1914) where a single act in which noise pile driving at night during temporary building works was held to be a private nuisance.

5.7 Proof of Causation

Causation is particularly difficult in environmental nuisance cases. Plaintiffs must prove that the defendant's actions directly caused the harm. In nuisance the interference must cause real, non-trivial damage or discomfort (e.g., strong odors, persistent loud noise, vibrations). The claimant must show that the defendant's conduct caused the interference. In cases of Industrial pollution, Multiple polluters. It becomes hard to identify which actor caused the harm. This is especially problematic in Mining areas, Urban industrial zones. Example in 2016 it was reported by Prof. *Muhongo* and *John Heche* by then he was a member of Parliament, it was reported that the toxic water from the North Mara (Nyamongo) gold mine in Tarime District, Mara Region is affecting local residents. And the government, through the National Environmental Conservation and Management Council (NEMC), has fined the Acacia North Mara gold mine located in Nyamongo, Tarime district, 5.6 billion shillings for failing to control a toxic water reservoir, thereby endangering the health of residents surrounding the mine. However, not every inconvenience amounts to

⁸⁵ Ibid

nuisance. Harm must be serious, material, and more than trivial annoyance. Many environmental harms e.g., noise, odors, pollution are gradual or intangible, making proof difficult. Courts may dismiss genuine grievances as “normal discomforts of modern life.” Victims often fail to meet the evidentiary threshold, especially in urban settings like Dar es Salaam. In the case of *Suleiman Chacha* (supra), in this case the plaintiff was failed to prove what he suffered is caused by the defendant activities.

In the case of *Festo Balegele and 749 other V. DSM City Council and another*, the court held that what the council had been doing at Tabata does not only constitute a tort but it is also a criminal. Section 185 of the Penal Code makes it an offence punishable with imprisonment for any person voluntarily to vitiate the atmosphere in any place so as to make it noxious to the health of person in general dwelling or carrying on. In the neighborhood or passing along a public way.

In Tanzania, this is especially problematic in cases involving industrial emissions or water pollution, where scientific evidence is required but often inaccessible, due to economic hardship so it causes nuisance to be conducted despite the facts that it affects the right of other people on the use of land. For instance, in the case of *Suleiman Chacha v. North Mara Gold Mine Ltd*,⁸⁶ in this case the Court held that in a case of nuisance especially in industrial matters it is necessary to prove that what the plaintiff is suffering is caused by not only dust, rather it is dust from defendants' activities.

5.8 Requirement of Proprietary Interest

The requirement that a claimant must have a proprietary interest in land is a major limitation. For instance, in the case of *Iddi Salum Babu v. Grace Sillo Wawa, MIC Tanzania Limited and Tigo Tanzania Limited*,⁸⁷ where the court stated that for a nuisance to be proved, there are three elements; one of it that the plaintiff owns the land or has a right to possess, that the defendant acted in a way that interferes with the plaintiff enjoyment and use of his property and that, the defendant interference was substantial.

Also, this principle was firmly established in *Hunter v Canary Wharf Ltd*,⁸⁸ where the court held that only those with legal interest in land can sue in private nuisance. To prove interest in a land or property in a case of nuisance it is difficult and still challenges. Because in Tanzania, where informal land occupation is widespread, many affected individuals lack legal standing. This creates difficulties given the prevalence of informal land occupation, excluding many affected individuals from seeking remedies. For instance, in public nuisance a claimant must prove that has a *locus standing* to take a legal action. Where in proving the locus standing there is ingredients that may be proven to give a private individual a *locus standing* to sue in a public right; first, that he must have suffered damage of a kind and degree different from those sustained by members of the public in general. Second, that he has sustained physical injury special and particular to him, rather than common to the public. All this make it difficulties to establishing liability in nuisance in Tanzania.

5.9 Evidential and Technical Challenges

Nuisance cases often require expert evidence, such scientific expert to test if the effects or damage caused by the nuisance done by the defendant, although is costly and difficult to obtain it. In the Tanzanian case of *Festo Balegele*(supra), residents challenged the operation of a city dump site. The court recognized the environmental harm but the case highlighted the challenges of proving technical aspects of nuisance and enforcing remedies. Also, in the case of *Suleiman Chacha* (supra) the case held that a plaintiff failed to prove scientifically that the disease his family members suffering is caused directly by the activities done by the defendant. This case is particularly significant as it

⁸⁶ Civil case no 09 of 2022

⁸⁷ Civil Appeal no. 79 of 2016

⁸⁸ Hunter v Canary Wharf Ltd [1997] AC 655, HL

demonstrates judicial willingness to address environmental nuisance, while also exposing evidential and enforcement limitations.

5.10 Weak Enforcement Mechanisms

Even when courts recognize nuisance, enforcement remains weak. For instance, In *Festo Balegele v Dar es Salaam City Council*, (*supra*) although the court acknowledged the nuisance caused by the dumping site, practical enforcement of orders remained problematic due to administrative and institutional weaknesses. So, because of weakness of the enforcement mechanism is still difficult to establish liability and people compensated or cured.

5.11 Policy Considerations

The existence of policy considerations plays a significant role in nuisance cases. Courts often may balance individual rights against economic development. For instance, the current issues where people build an industry which may be danger to the health of the members of society around the industry but it may be licenced despite of it is dangerous to the health.

A good example in a case of *Miller v Jackson*,⁸⁹ shows judicial reluctance to restrict socially beneficial activities despite nuisance claims. Tanzanian courts similarly tend to favour development projects, sometimes at the expense of individual land rights. It is painful and truthful that Tanzanian nuisance law is still heavily dependent on foreign jurisprudence. The weakness of policy and law weakens environmental justice and shields powerful actors. While cases like *Festo Balegele v Dar es Salaam City Council* indicate progress, they also reveal systemic weaknesses in enforcement and access to justice.

In the case *Festo Balegele and 794 Others v. Dar es Salaam City Council* (1991) is a landmark Tanzanian High Court case establishing environmental rights. The court ruled that dumping waste near the residential area of Kunduchi Mtongani was a health hazard, violated the residents' constitutional right to life (Article 14), and was *ultra vires* the Local Government Act. The Dar es Salaam City Council was dumping, burning, and creating a public nuisance with city waste near a residential area, causing hazardous smoke and health risks. The High Court found the Council's actions were dangerous, unauthorized, and violated the fundamental right to a clean and healthy environment. This case solidified the interpretation that the Constitution of Tanzania protecting the "right to life" implicitly includes the right to a clean and healthy environment, allowing residents to sue for environmental harm. The court ruled in favour of the applicants (residents), confirming that public authorities cannot act recklessly in matters of public health.

6. Challenges Facing the Tort of Nuisance in Tanzania

Why there is need for law and policy changes on nuisance law, and we have a gap in Tanzania concerning the tort of nuisance because of the challenges facing nuisance cases are so many. Tanzania's nuisance law is derived from English common law, applied subject to local conditions. The law assumes formal land ownership, Clear property rights. But Tanzania has informal settlements, customary land tenure. This creates structural injustice in access to remedies

6.1 Difficulty in Balancing Development and Environmental Protection

In Tanzania Courts often balance Public benefit (e.g., industry, infrastructure) against private harm. The problem is this balancing test tends to favor Investors and State projects which leading to under-protection of citizens' land rights.

⁸⁹Miller v Jackson [1977] 1 QB 966

6.2 Weak Integration with Environmental Law

Although nuisance overlaps with environmental protection is still treated as a private law remedy. It does not adequately address climate harm, large-scale pollution. Therefore, there is need for stronger statutory environmental frameworks.

6.3 Access to Justice

Challenges Litigation is costly, burden of proof is high and technical evidence (e.g., pollution) in the nuisance. Litigation barriers often prevent victims of environmental or structural damage from seeking justice. High legal costs, difficult burdens of proof, and the complexity of technical evidence (e.g., pollution metrics) create an uneven playing field that favors well-funded corporate or governmental entities.

6.3.1 Breaking Down the Litigant's Roadblocks

6.3.1.1 Prohibitive Costs: Formal court proceedings involve exorbitant legal fees, expert witness retention, and court filings, which can financially ruin everyday plaintiffs pursuing complex civil claims.

6.3.1.2 The Burden of Proof

In adversarial systems (like those in East Africa), the legal onus falls entirely on the plaintiff claiming harm. Proving causation showing that a specific factory's pollution caused a distinct health issue or ecological destruction is notoriously difficult.

6.3.1.3 Technical & Scientific Evidence: Winning a pollution case requires specialized environmental, chemical, or medical experts. Without proper data, equipment, or independent impact assessments, plaintiffs struggle to meet the strict evidentiary standards of a courtroom.

6.4 Conclusion

Establishing liability for nuisance in Tanzania is legally complex and practically difficult due to ambiguous standards (reasonableness, substantial harm). Restrictive standing rules, evidentiary challenges, and strong policy bias towards development. These difficulties are deeply rooted in both legal doctrine and policy considerations. Case law demonstrates that challenges such as proving unreasonableness, causation, and legal standing continue to hinder effective redress. While Tanzanian courts have shown willingness to address nuisance, greater reliance on localized jurisprudence and stronger enforcement mechanisms are necessary to ensure meaningful protection of land rights. There is need for enactment of the nuisance legislation rather than using common law principles.

7. Recommendations

Establishing liability for nuisance in Tanzania is highly challenging due to a fragmented legal framework, reliance on outdated English common law, and rigid rules of evidence. The best recommendations require a multi-tiered approach, focusing on statutory modernization, environmental policy enforcement, and specialized judicial mechanisms.

In light of what I have learned about the tort of nuisance and after the research work, in my opinion, I would like to say that there should be more codified laws in relation to nuisance in Tanzania. It is still uncoded which creates a lot of confusion, and it is high time that nuisance should be regarded as an important part of the Tanzanian legal system. There is still a lot of debate whether a case is negligence or nuisance, therefore it is essential to codify nuisance. Further it is also important to spread awareness regarding it, since given the huge population of Tanzania,

there are many cases of it which go unreported. Even though there are many English precedents related to it, but they cannot always be referred for deciding the cases in Tanzania.⁹⁰

7.1 Legislative Reforms

- (a) *Codify the Law of Torts*: Parliament should enact a comprehensive Civil Wrongs (Tort) Act. This would eliminate ambiguity, explicitly define “nuisance” in the modern Tanzanian context, and remove the necessity of referring to the English Common Law (Application of Laws Act).
- (b) *Harmonize Conflicting Laws*: Align the EMA 2004 with urban planning laws and local government by-laws to establish unified penalties and streamline who holds administrative jurisdiction over public nuisance complaints.

7.2 Policy & Enforcement Enhancements

- (a) *Strict Liability for Industrial Nuisance*: Amend environmental policies to impose strict liability on industrial and corporate entities for emission-based nuisances, bypassing the difficult legal requirement of proving “negligence” or “intent.”
- (b) *Decentralize NEMC Functions*: Empower regional and district environmental officers to issue immediate stop orders and on-the-spot fines for noise and pollution, rather than funneling all grievances to NEMC headquarters or civil courts.

7.3 Judicial & Access to Justice Reforms

- (a) *Establish Specialized Environmental Courts*: Create specialized environmental benches within the primary or resident magistrate courts. This would expedite nuisance litigation and reduce the case backlogs that currently discourage victims from seeking justice.
- (b) *Lower the Evidentiary Burden for Public Nuisance*: Amend the civil procedure code to allow class-action suits or public interest litigation for environmental and public nuisances, especially for marginalized communities who lack the funds to hire expert witnesses

7.4 Legal and Policy Reforms

- (a) *Codification and Simplification of Law*: Nuisance in Tanzania is largely governed by common law, which is often difficult for ordinary citizens to understand. It is recommended to codify the tort of nuisance into specific statutes that clearly define acts of nuisance and remedies in Tanzania.
- (b) *Refining Compensation Procedures*: The Land Acquisition Act, Cap 118 [RE 2002] is often criticized for providing unfair and inadequate compensation. Reforms are needed to ensure "fair and prompt compensation" for victims of nuisance, particularly when private property is damaged.
- (c) *Environmental Protection Strengthening*: As nuisance frequently stems from pollution (smoke, smells, noise), environmental regulations must be strengthened to allow lower-level inspectors to halt nuisance acts instantly.

7.5 Institutional and Procedural Enhancements

- (a) *Restructuring Land Dispute Bodies*: The current system of Village Land Councils (VLCs) and Ward Tribunals (WTs) is often inefficient and subjected to political interference. It is recommended that they be limited to mediation roles, with adjudicatory powers transferred to District Courts.

⁹⁰ The United Republic of Tanzania the Law Reform Commission of Tanzania Report of the Comprehensive Review of Civil Justice System in Tanzania Presented to the Minister for Justice and Constitutional Affairs Dar es Salaam may, 2013

- (b) *Establishing Specialised Environmental Courts*: To specifically handle environmental nuisance, specialised courts or tribunals should be established. This would provide expertise in determining if a nuisance is truly “substantial or unreasonable.”
- (c) *Simplifying Procedures and Strengthening Evidence*: Courts often suffer from a lack of technical expertise to handle cases involving noise, vibration, or chemical pollution. It is recommended that tribunals and courts allow for simplified procedures and adopt more relaxed rules on the admission of circumstantial evidence.

7.6 Addressing Specific Difficulties in Proving Nuisance

- (c) *Reducing the Burden of Proof for “Unreasonableness”*: Under Tanzanian common law, a plaintiff must prove substantial and unreasonable interference. It is recommended that environmental guidelines provide more objective standards (e.g., maximum decibels for noise, chemical levels in water) to make it easier to prove a breach of standard.
- (d) *Clarifying “Locus Standi” in Public Nuisance*: While private citizens can sue for public nuisance, they must prove “special injury” above that of the general public. Courts should take a broader view of “special injury” in cases of environmental health damage.

7.7 Improving Enforcement Mechanisms

- (a) *Enforcing Landlord Liability*: Under the Rent Restriction Act and Common Law, landlords are responsible for maintaining structural integrity and preventing disturbances. Strengthening the enforcement of this act ensures landlords act upon nuisances created by their tenants.
- (b) *Proactive Municipal Enforcement*: Instead of relying entirely on victims to file private lawsuits, municipal authorities should actively use their statutory power to abate public nuisances, such as improper disposal of waste, excessive noise, or harmful industrial practices.

By addressing these legal, institutional, and enforcement gaps, Tanzania can better balance the rights of property owners and ensure a healthy and undisturbed nuisance for citizens.

References

- Binamungu, C. S. (2002). *Law of torts in Tanzania*. Research and Publication Department, Mzumbe.
- Campbell, D. (2000). Of Coase and corn: A (sort of) defence of private nuisance. *Modern Law Review*, 63, 197.
- Catherine, E., & Frances, Q. (2009). *Tort law* (7th ed.). Pearson Education Limited.
- Conaghan, J., & Mansell, W. (1998). *The wrongs of tort* (2nd ed.). Pluto Press.
- English, R. (1996). The tenant, his wife, the lodger and their telly: A spot of nuisance in Docklands. *Modern Law Review*, 59, 726.
- Gearty, C. (1989). The place of nuisance in a modern law of torts. *Cambridge Law Journal*, 214.
- Harlow, C. (2005). *Understanding tort law* (3rd ed.). Sweet & Maxwell.
- Harpwood, V. (2000). *Principles of tort law* (4th ed.). Cavendish Publishing.
- Jain, A. K. (2016). *Law of torts* (8th ed.). Ascent Publications.
- O’Sullivan, J. (2004). Nuisance, human rights and sewage: Closing the floodgates. *Cambridge Law Journal*, 63, 552.

Rodgers, C. (2001). Nuisance and the unruly tenant. *Cambridge Law Journal*, 60, 382.

Rosemary, O. L. (1993). Five trends in government liability under environmental laws: Implications for public administration. *Public Administration Review*, 56, 542.

Salmond, J. W. (1965). *Salmond on the law of torts* (R. F. V. Heuston, Ed.; 14th ed.). Sweet & Maxwell.

Steele, J. (1995). Private law and the environment: Nuisance in context. *Legal Studies*, 15, 236.