

# Climate Action, Climate Litigation and Climate Justice: Relevance in Addressing Climate change in Uganda

Peter Davis Mutesasira (PhD)

Paper presented at the Young Lawyers Training on Climate Action, Climate Litigation and Climate Justice  
15th August 2024 at Mestil Hotel, Kampala – Uganda

*Theme: “Igniting Passion for Climate Justice: Empowering Young Advocates for Environmental Change”*

*Organised by Greenwatch Uganda and Uganda Law Society*

# 1.0. Introduction

- Climate change is still a significant challenge currently being faced by the human kind and the global environment.
- In Uganda climate change is manifested by landslides, floods, severe drought, land conflicts, forced displacement, malnutrition, human-wildlife conflicts and unpredictable weather patterns which have all had long term impacts on human health and the environment.
- The Paris Agreement of 2015 to which Uganda is a Party acknowledges the threat of climate change and accordingly requires States to undertake ambitious efforts to combat climate change by the year 2030.
- Climate change disproportionately affects some persons or communities i.e., those that contribute less are often more adversely affected requiring equitable sharing of benefits and burdens associated with climate change.

## Introduction Cont'd.....

- Addressing climate change requires climate action in the form of innovative strategies such as climate change especially where states have failed to comply with their international obligations.
- Through climate litigation, the courts do not only adjudicate on matters concerning existing legislation, but establish new frontiers by interpreting existing legislation to require additional climate considerations.
- It is therefore, not in doubt that there is some commonality in the vulnerability of Ugandans including, lawyers to the adverse effects of climate change and their relative contribution to addressing climate change.
- Thus, it is imperative to not only educate and inform young lawyers about climate change but also to ignite their passion and commitment to climate justice through climate litigation.
- This presentation will therefore examine, what climate action, climate litigation and climate justice entail, and why it is crucial in addressing climate change in Uganda.

## 2.0. Climate Action

- Climate action refers to efforts taken to combat climate change and its impacts.
- These efforts involve reducing greenhouse gas emissions (climate mitigation) and/or taking action to prepare for and adjust to both the current effects of climate change and the predicted impacts in the future (climate adaptation).
- To prevent climate change from reaching dangerous levels, the international community has agreed that global warming must be kept to well below 2 °C above pre-industrial levels and to aim to limit the temperature increase to 1.5 °C.
- Uganda is therefore, required as (see, provisions of the 1992 UNFCCC and the 2015 Paris Agreement) to work towards cutting its emissions and to encourage major polluters to take action.
- SDG 13 requires climate action by states through education, innovation and adherence to international climate commitments.

## Climate Action Cont'd....

- SDG 13 further provides for targets to create action to combat climate change such as: strengthening resilience and adaptive capacity to climate related disasters; integrate climate change measures into policies and planning; build knowledge and capacity; implement the 1992 UNFCCC; and capacity building for climate planning and management.
- As part of climate action, Uganda has put in place an elaborate legal framework (e.g., 2019 National Environment Act, 2021 National Climate Change Act, Forests and Tree Planting Act, etc.) and institutional framework (e.g., NEMA, NFA) on climate change.
- Climate action is therefore, any *policy, measure, or program* that reduces greenhouse gases, builds resilience to climate change, or supports and finances those goals.
- It is suggested that climate litigation is an effective climate action mechanism that can be deployed to address climate change.

## 3.0. Climate Justice

- Climate change does not affect all persons and communities equally as some experience disproportionate impacts premised on existing vulnerabilities, historical patterns of inequity, socioeconomic disparities and systemic environmental injustices.
- Climate justice aims at recognising and addressing the unequal encumbrances that have been aggravated by climate change, while ensuring that all people share the benefits of climate protection efforts.
- Climate justice invoke issues related to equality of all humans, intergenerational distributive justice (including compensation for harm caused) and inclusive or transparent decision-making.
- Climate justice also requires that humans and non-human members of the eco-system should be treated as equals especially with regard to access to clean air, water, food, natural resources, etc.

## Climate Justice Cont'd....

- Climate justice has strong links to the domestic implementation of the right of access to justice which is provided for in articles 50 and 137 of the Constitution.
- Access to justice and combating climate change are intertwined, especially when dealing with the enforcement of legal claims through climate litigation e.g., *Urgenda v the Netherlands*, ([2015] HAZA C/09/00456689) the Hague District Court agreed with petitioners that the Dutch government had failed to take more action to combat climate change in keeping with its obligations under the UNFCCC.
- Climate justice should therefore, recognise the disproportionate effects of climate change on some sections of society especially those that are least responsible for the problem.
- Climate justice should therefore, promote policies that advocate and plan for a just transition and an equitable and sustainable future.

## 4.0. Climate Litigation

- Climate litigation started out in the United States of America (USA) and to date, a total of over 1700 cases have been identified globally as being brought between 1986 and the end of May 2024.
- It is important to note that unlike the global north where climate litigation has gained impressive momentum, the situation in the global south including, Africa is different as climate litigation is still evolving.
- The most prominent climate litigation case in the European and probably in the global context is the case of *Urgenda v the Netherlands* ([2015] HAZA C/09/00456689).
- In Africa it is mainly in South Africa (*Earthlife Africa Johannesburg v The Minister of Environmental Affairs and Others* (65662/16)) and Nigeria (*Gbemre v Shell Petroleum Development Company of Nigeria Ltd and Others* (FHC/B/CS/53/05)) where court cases which primarily focused on climate change have been successfully litigated.



## Climate Litigation Cont'd....

- It is important to note that in the global north, climate change arguments are at the '*centre*' of the legal arguments or the primary basis upon which the case is based.
- In otherwards, in many of the cases in the global north, there is explicit reference to climate change.
- Furthermore, the years following the 2015 Paris Agreement have also seen an increase in climate-related cases filed in the courts.
- Whereas climate litigation in the global north is used as an enforcement mechanism of legal regulatory frameworks specifically tailored at addressing climate change, climate litigation is also used to compel governments to implement more ambitious policies in countries with limited or perceived-to-be inadequate climate change action.

## Climate Litigation Cont'd....

- By comparison to the global north, fewer climate cases have been litigated in the global south.
- In the global south climate cases which are climate change 'centred' have been litigated or are being litigated in countries such as Pakistan, India, Brazil, Philippines, Colombia, South Africa, Kenya, Nigeria, etc.
- Nonetheless, the number of climate cases being litigated in the global south especially in Africa has been growing in importance and quantity although, these are yet to receive the much needed scholarly attention.
- This is, however, not to say that courts in in the global south have not been playing an important and often active role in mediating environmental conflicts.
- Unlike the global north where climate change is a 'central' issue in court cases, in the global south, climate change is a 'peripheral or incidental' issue in court cases.

## Climate Litigation Cont'd....

- 'Peripheral or incidental' climate litigation often focuses on enforcement of human rights, compliance with environmental legal framework and seeking of remedies such as damages, injunctions, environmental restoration orders, improvement notices, etc.
- In such cases, litigation may be initiated expressly for purpose of addressing climate change, but litigants might opt to actively exclude issues of law or fact regarding the science of climate change, or climate change mitigation or adaptation efforts, from their argument for strategic reasons.
- In Uganda, two notable cases which are 'climate' centered have been filed in the courts but regrettably they have never been heard to final conclusion e.g., *Mbabazi & Others v Attorney General & NEMA* which highlighted the intergenerational equity principle filed in 2012.

## Climate Litigation Cont'd....

- Many of the environmental cases that have been litigated in the Ugandan courts for instance, have adopted the 'peripheral or incidental' approach to climate change litigation.
- Legal frame on litigation in Uganda: Constitution, arts 50 & 137; National Environment Act, secs 3(3) & 4(2)) and the National Climate Change Act (NCCA 2021: sec. 26) For instance many of the environmental cases in Uganda have have been by way of *public interest litigation (PIL)* focused on issues such as the public trust doctrine, precautionary principle & EIA, access to environmental information, public participation in environmental decision-making, clean & healthy environment and the right to life.
- See, *The Environmental Action Network (TEAN) v Attorney General and National Environment Authority (NEMA)* (Miscellaneous Application No. 39 of 2001 High Court of Uganda).

## Climate Litigation Cont'd....

- See also: *Scheer Property Limited vs National Environment Management Authority (NEMA) and Others*, (Miscellaneous Cause No. 232 of 2008 High Court of Uganda); *United Organization for Batwa Development in Uganda (UOBU) & 11 Others v Attorney General & 2 Others* (Constitutional Petition No. 3 of 2011); *Advocates Coalition for Development and Environment (ACODE) v Attorney General*, (Miscellaneous Cause NO. 0100 of 2004 High Court of Uganda); *Godfrey Nyakana vs National Environment Management Authority (NEMA) and Others* (Constitutional Appeal No. 5 of 2011 Supreme Court of Uganda); and *Asiimwe Dennis Barigye and Others v Leaf Tobacco and Commodities (U) Ltd and National Environment Management Authority (NEMA)* (Miscellaneous Cause No. 43 of 2013 High Court of Uganda at Nakawa).

## 5.0. Conclusion

- The global south has concentrated on the use of human rights i.e. constitutional and socio-economic (e.g. human dignity, health, life, property, clean environment, etc.) as a basis for climate litigation so as to oblige States to reduce GHG emissions and also hold major emitters such as corporations accountable.
- Courts act as collaborators in the regulatory process, interpret and engage with strong government - led efforts to mitigate climate change to ensure more climate - friendly outcomes.
- Climate litigation is a fairly recent and gradual addition to the broader portfolio of environmental judicial dispute resolution but it is nonetheless, an effective strategy in addressing climate change.
- It is evident that the global north and the global south have adopted varying approaches with respect to climate litigation.

## Conclusion Cont'd....

- Human rights arguments have played a pivotal role in enhancing climate action, justice and litigation especially in the global south.
- With regard to litigation, courts should give real and effective remedies such as compensation to those that have been harmed by climate change including, eliminating barriers or limitations to climate justice such as costs, security for costs, undue delays or expeditious hearing of cases, etc.
- If the other arms of government such as legislature and executive are taking their time to act on climate change, the judiciary at the instigation of lawyers should step up and taken on the task.
- In a nutshell, litigation is an effective catalyst to ensuring that states take the desired climate action aimed at promoting climate justice.

=====*The End*=====

*Thank you!*