

Liability for Noise Emissions from Telecommunication Masts and Base Stations: The Rights and Plights of Occupiers of Adjoining Premises in Nigeria

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ABSTRACT

Modern communication relies on information transmission through electronic facilities. To ensure wide area coverage telecommunication companies install masts and base stations. Steady power supply to the masts and base stations require power generators which usually cause noise pollution in the premises where masts and base stations are sited. This essay examines the liability of telecommunication companies to noise emissions from base stations on occupiers of adjoining premises and the effect of the existing legal and regulatory frameworks in curbing the menace. In the course of the research, the essay collates and analyses primary sources such as the National Environmental Standards and Regulation Enforcement Agency (NESREA) Act, The National Communication Commission (NCC) Act among others. The research found that the provisions of the existing laws have not solved the hardship occasioned by noise pollution on occupiers of adjoining premises owing basically to the shortcomings in the laws such as the omission of compensation to private individuals and regulatory overlap which lead to power tussle among the relevant regulatory agencies. The essay further revealed that occupiers of the exact and adjoining premises where these masts and base stations are sited rarely succeed in actions founded on private nuisance owing the difficulties in establishing causal links between noise pollution and damages suffered. The essay suggests an amendment of the existing legal and regulatory frameworks to accommodate compensation to private individuals. It also suggest a strict liability regime for noise emissions particularly from telecommunication masts and base stations.

Keywords: Telecommunication Masts, Base Station, Occupier, Nuisance, Premises, Right

INTRODUCTION

The advent of telecommunication has paved way for smart and speedy ways of communication enabling wide area coverage in a short period of time.¹ The growth and expansion of telecommunication as a tool of interaction and essential human need in Nigeria since the early 2000s has aided in the growth of the nation's economy and social connectivity.² In order to ensure wide area coverage and uninterrupted connectivity, telecommunication service providers erect telecommunication masts and base stations across many urban and sub-urban areas in the country to serve the need of the teeming population as well as to maximize profit.³ The advantage of these

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¹ PB Seel, *Digital Universe: The Global Telecommunication Revolution* (John Wiley & Sons, 2022) <<https://www.books.google.com>> accessed 24 August 2026.

² A Abdur-rahman and Others, 'Impact of Telecommunication Infrastructure on Economic Growth in Nigeria' (2025)1 *Journal of Economics and Allied Research*, <<https://researchgate.net>> accessed 24 August 2026.

³ AV Mbanuzuru and Others, 'Telecommunication Masts Siting Near Residential Areas: Potential Carcinogenic Risks, Public Health Risks and Regulatory Gaps in Sub-Saharan African Context' (2025) 15(4) *Journal of Cancer and Tumor International*, 103-112.

masts and base stations to consumers of telecommunication services and the companies notwithstanding, the aggressive and sometimes indiscriminate erection of these masts and stations are not without some environmental risks and costs.⁴ The need to continuously power these masts and base stations for the regular provision of telecommunication services necessitates the need for daily running of heavy duty generators and cooling unit. These generators often cause structural vibrations as well as emit noise into the surrounding premises thereby interfering with rights of occupiers of adjoining premises to the use and peaceful enjoyment of their land.⁵

The negative effect of noise emission ranges from sleep deprivation, fatigue, retarded cognition and hypertensive risk which constitute serious health challenges to the victims.⁶ Medical reports have maintained that certain ailments are traceable to vibrations and noise emitted from telecommunication masts especially where masts are erected within close range to residential premises.⁷ Similarly, the World Health Organisation warns that telecommunication masts should be located at least 10 metres radius away from residential quarters and premises so as to reduce the contact and effect to humans.⁸ The implication of siting telecommunication masts close to residential properties therefore presents a tension between the economic rights of communication service providers on one side and the right of occupiers to peaceful enjoyment of their property on the other.

In spite of the existence of some legal and regulatory frameworks on the siting, setback distances and permissible noise levels in specified locations, enforcement remains a far cry from the statutory provisions⁹. Conflict of interest among the fragmented regulators constitutes a setback to achieving the purpose of the statutory provisions¹⁰. Omission of compensation to private individuals in the relevant legal and regulatory frameworks, as well as the task of discharging the evidential proof of the causal link between noise emission and damages private nuisance action constitute a clog to affected occupiers in protecting themselves and their right over property.¹¹

A review of academic literature reveals that although scholarly attention to the effect of telecommunication masts and base stations in Nigeria is growing, most studies focus on the adverse effect to human health and security of properties¹², the need to appropriately regulate the site locations so as to mitigate the effects on constant exposure to residents¹³, the compliance of telecommunication operators to the requirement in spatial distribution of base stations¹⁴, the need for sufficient health and environmental risk assessment and adequate regulatory oversight before siting telecommunication masts¹⁵, possible ways of mitigating residents' concerns

⁴ G Okoro, 'The Environmental Implications of the Proliferations of Telecommunication Masts and Towers in Nigeria: A Case Study of Mgbede Community in Ogba/Egbema Ndoni LGA, Rivers State' <www.academia.edu> accessed 24 August, 2026.

⁵ Ibid.

⁶ AO Kehinde, 'Hazards of Telecommunication Mast Installation in Nigeria: Danger of Non-Compliance with Established Regulations on the Environment: Enugu State Nigeria as a Case Study' <www.janerjournalarchive.com> accessed 24 August 2026.

⁷ C E Onyenekenwa 'Environmental Pollution and Health Effects of Electromagnetic Radiations from Telecommunication Masts Erected Near Residential and Educational Facilities in Enugu, Nigeria *A Paper by The Institute for Development Studies, Enugu Campus of the University of Nigeria, Nsukka.*

⁸ Ibid.

⁹ Mbanuzuru (n3).

¹⁰ Kehinde (n6).

¹¹ A Ebekozen, O Ebekozen and SO Ayo-Odirin, 'Evaluating Nigeria's Residents Perception and Willingness to Live in Telecommunication Mast Locations' (2022) 32(4) *Journal of Human Behaviour in the Social Environment*, 479-400.

¹² MK Imam-Tamim, O Oyepipo and YA Alayo, 'The Precautionary Approach to the Installation of Telecommunication Masts in Residential Areas in Nigeria: A Legal Response' (2016) 24 *IJUMIJ*, 193.

¹³ G Okoro, 'The Environmental Implications of the Proliferations of Telecommunication Mats and Towers in Nigeria: A Case Study of Mgbede Community in Ogba / Egbema /Ndoni LGA, Rivers State' <https://www.academia.edu> accessed 19 August 2026.

¹⁴ A Yusuf and Others, 'Spatial Distribution of Telecommunication Base Station and its Compliance in Federal Capital City (FCC) Abuja' (2025) 30(2) *Journal of Nigerian Institute of Town Planners*, 132-149.

¹⁵ AV Mbanuzuru and Others, 'Telecommunication Mast Siting Near Residential Areas: Potential Carcinogenic Risks, Public Health and Regulatory Gaps in a Sub-Saharan African Context' (2025) 15(4) *Journal of Cancer and Tumor International*, 103-112.

regarding likely health hazards¹⁶ and the need for the regulators to strictly enforce laws regulating mast location in residential areas¹⁷.

In spite of these scholarly attentions, there still exist, noticeable research gap particularly on the tension between the property rights of occupiers and the economic right of telecommunication mast owners as well as the right and plight of property owners and occupiers in maintaining action in private nuisance against mast operators in issues arising from noise emissions from masts and base stations. The aim of this research therefore, is to examine the impact of noise pollution on the right of occupiers to peaceful enjoyment of property; the right of occupiers to institute action in private nuisance; what an occupier must prove to succeed in an action founded on private nuisance, and the duty of regulatory agencies in protecting occupiers from noise emission from telecommunication masts in Nigeria. The questions that this research is set to answer are do occupiers reserve the rights to maintain action in private nuisance against owners and operators of masts for inconveniences arising from noise pollutions emitting from masts and base stations; what are the problems occupiers usually face in discharging the evidential proof of excessive and non-permissible noise decibels against telecommunication masts and base stations operators, and how effective are the regulatory frameworks in this area of law in Nigeria.

The study employs a qualitative research methodology to investigate the tension between the right of occupiers to peaceful enjoyment of their property free from noise pollutions; and the economic and commercial right of telecommunication mast owners to power base stations using power plants and generators. The research is purely doctrinal, grounded in examination of normative legal instruments, policy documents, judicial decisions, materials in textbooks and academic publications in the area of telecommunication masts siting and operations in Nigeria.

Conceptual Clarifications

Telecommunication Mast and Base Stations

A telecommunication mast is a free standing structure supporting antennae at a height where radio waves and transmission signals can be easily received and transmitted for information and communication.¹⁸ In the primordial times, communication was mainly through messengers and courier systems.¹⁹ A significant shortcoming of the messengers and courier systems is that they have short areas of coverage owing to the crude means of transportation which makes it impossible for information to get to their needed destination promptly especially where a wide distance exist between the courier and the recipient.²⁰ The advent of electrical system of telecommunication ushered in smart and speedy ways of communication that enables wide area coverage in a short period of time.²¹ In Nigeria, the growth and expansion of telecommunication as a tool of interaction and essential human need since the early 2000s has aided in social connectivity and significant growth of the nation's economy.²² In order to ensure wide area coverage and uninterrupted connectivity, telecommunication service providers build and erect telecommunication masts and base stations across many developed and developing areas in Nigeria to serve the need of the teeming population as well as to maximize profit. The advantage of these masts and base stations to consumers of telecommunication services and the companies notwithstanding,

¹⁶ A Ebekozen, O Ebekozen and SO Ayo-Odifiri, 'Evaluating Nigeria's Residents Perception and Willingness to Live in Telecommunication Mast Locations' (2022) 32(4) *Journal of Human Behaviour in Social Environment*, 478-500.

¹⁷ AE Abdullahi and G Enobakhare, 'Preliminary Survey of Health Hazard Associated with Telecommunication Mast Installations Close to Residential Buildings in Auchi, Etsako Edo State, Nigeria' (2022) 6(4) *FUPRE Journal of Scientific & Industrial Research*, 100.

¹⁸ C G Ogbonna, V U Okoye and E I Eleazu, 'Telecommunication Masts / Base Transceiver Stations and Regulatory Standards in Abia State' [2016] 9(6) *Journal of Sustainable Development*; 46-57.

¹⁹ A Lucino, 'Medieval Communication: The Evolution of the Messenger' <<https://www.shorthistory.org>> accessed 16 January 2025

²⁰ Ibid

²¹ JH Schiller, *Mobile Communications* (Pearson Education, 2003) <<https://www.books.google.com>> accessed 1 September 2026.

²² ED Arinze, 'The Impact of Digital Innovation on Economic Growth in Nigeria' (2024) *IDSOR Journal of Computer and Applied Sciences*, <<https://www.smartie.kiu.ac.ug>> accessed 1 September 2026.

the aggressive and sometimes indiscriminate erection of these masts and stations are not without some environmental risks and costs.²³

Occupier

The term ‘occupier’ is described as a person having sufficient degree of control over premises to the extent that any failure on his part to take care may result to injury to persons lawfully coming into the premises.²⁴ It does not necessarily mean the legal or rightful owner of premises, it connotes persons who though are not owners, but are in lawful occupation including persons such as a tenant in possession, a lease as well as a manager of premises.²⁵ Occupiers of premises possess the legal right to maintain action against interference in the use and enjoyment of the land in so far as possessory interest in the land can be established. In other words, an occupier’s right and interest on land includes ownership right, tenancy right especially where exclusive possession has been given²⁶. Thus, mere licensees, visitors or other persons including relatives and household members without any legal right or title to the land may not sustain actions against a defendant.²⁷

Premises

The term ‘premises’ is defined as a house, building together with its appurtenances including land without building thereon.²⁸ It may also be used to refer to areas mapped out for business, residential and non-residential purposes.²⁹ It has been defined as a type of property containing either a single family or multi-family structure available for occupation or business purposes; an improved real property zoned and accordingly occupied mainly for living and other purposes such as business, industrial or agricultural purposes.³⁰ Thus, premises means a dwelling place, a human abode, a neighbourhood or surrounding where human existence and activities take place. It can be a residential, industrial or business or a mixed premises comprising of both residential and business / industrial activities.

Nuisance

Nuisance refers to a tortious liability arising from actionable inconveniences or annoyance in the use and enjoyment of one’s land /property caused by a harmful activity of another usually a neighbour or owner and occupier of an adjoining property³¹. An action in nuisance can be maintained in public or private nuisance. A public nuisance is committed when a defendant’s harmful conduct affects the general public or a significant section of it.³² Public nuisance is a crime³³ considering that it affects the general public or a significant section of it. Private nuisance on the other hand seeks to protect the rights of private individual land and property owners or occupiers from substantial interference with the peaceful possession and enjoyment of land as a result of harmful activities of owners and occupiers of adjoining premises.³⁴

²³ EC Osodeke and CJ Onwuzo, ‘The Challenges and Effect of Telecommunication Mast Station to Human Health’ (2021) 8(3) *IOSR Journal of Mobile Computing and Applications*, 19-23.

²⁴ *Wheat v. E Lacon & Co. Ltd.* [1964] AC 522.

²⁵ MT Otu and J Edet, ‘The Status of Customary Tenants in Relation to Land Held by Him: An Overview of Customary Law’ (2023) 2(1) *International Journal of Law and Society*, 1-18.

²⁶ GE Oyedokun and Others, ‘Ownership and Possession Under Nigerian Property Law: Jurisprudential, Doctrinal Foundations and Judicial Perspectives’ (2026) 13(1) *The Nnamdi Azikiwe University Journal of Commercial and Property Law*, <<https://www.ezenwaohaetor.org>> accessed 24 August 2026.

²⁷ G Biriowu and CN Obiandu, ‘Possession as a Means of Proof of Ownership in Nigeria: A Legal Appraisal’ (2025) 1(2) *International Journal of Labour and Gender Rights*, 199-209.

²⁸ Recovery of Premises Act, s2.

²⁹ Tenancy Law of Lagos State. s47.

³⁰ (n28), s7.

³¹ G Kodilinye and O Aluko, *The Nigerian Law of Torts* (3rd edn. Spectrum Books, Ibadan 2018) 89.

³² Ibid.

³³ The Criminal Code Act, s234

³⁴ *Abila v Ijoma* (1970) 2 All NLR 268.

Legal and Regulatory Framework for Noise Emission in Nigeria

Protection of occupiers from noise emission and general environmental harm in Nigeria is founded on the Constitution, statutory provisions and common law torts particularly tort of nuisance. The legal and regulatory framework are examined below as follows:-

Constitution of the Federal Republic of Nigeria (CFRN) 1999

The CFRN clothe Nigerian citizens with basic right to acquire and own immovable property anywhere in Nigeria³⁵. The implication of this provision is that Nigerians can acquire, develop and exercise control over immovable property including land houses and other permanent structures as a matter of right. Based on this right, an unhealthy interference from another in an occupiers use and enjoyment of their right over land attracts both constitutional sanctions and legal remedies. In the case of *Abiola v Ijoma*³⁶, the court held that keeping large number of poultry close to neighbour's house which caused foul odour and noise amounts to unhealthy interference with the occupier's use and enjoyment of his land.

The CFRN further places the duty of protecting Nigerian environment on the Nigerian state by stipulating that the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.³⁷ By this provision, it is the duty of the State to protect Nigerian environment and Nigerians by regulating permissible acts and activities in any part of Nigerian soil and airspace. Legislative and administrative interventions towards protecting the environment by the government became prominent in Nigeria since the 1980s.³⁸ Over time, Nigerian state has integrated environmental protection policies into developmental programs in line with the constitutional provisions of the CFRN.³⁹ The provision of Section 20 of the CFRN not only guarantees the protection of Nigerian environment, maintaining its flora and fauna, it also provides the general and primary framework for national environmental standards on land, air and water.⁴⁰ Based on this, the role of the Nigerian State to maintain and safeguard the environment connotes the duty on the government to ensure a clean environment free from impurities and noise.

Applying this Constitutional provision to telecommunication masts and base stations, it behooves on the state, paying keen attention and consideration to the health of its citizens, to entertain cases and matters arising from noise pollution and vibration from telecommunication mast considering that such noise not only constitute interference with use and enjoyment of land, but also lead to health hazards and risks. Going by the provision of section 20 of the CFRN, it can be deduced that Nigerian state is open to protecting its citizens from any form of environmental health hazards in whatever form it may occur. However, it is important to note the non-justiciable nature of the provisions of Chapter II which section 20 falls within.⁴¹ The provisions in this Chapter are mere directive principles of State Policy and does not afford enforceable legal rights.⁴²

Nevertheless, Nigerian Courts have increasingly enforced environmental rights by enforcing same as, and under environmental rights such as right to life and dignity of human person. Severe noise pollution threatening health and peaceful enjoyment of property can be pursued under fundamental human rights. This is further buttressed by the attitude of courts towards enforceability of the provisions of African Charter on Human and People's Right (Enforcement) Act which provides for right to a general and satisfactory environment⁴³. The courts have upheld the domestic enforceability of the Charter⁴⁴ thereby providing property owners the opportunity to

³⁵ CFRN 1999, s 43.

³⁶ *Abiola v Ijoma* (n34)

³⁷ (n35), s20.

³⁸ BE Umukoro and MO Omozue, 'Environmental Protection and the Role of National Policies and Guidelines in Nigeria' (2024)4(2) *Journal of Environmental Law and Policy*; 211-234.

³⁹ EE Okon, 'The Environmental Perspective in the 1999 Nigerian Constitution' (2003) 5(4) *Environmental Law Review*.

⁴⁰ OO Samuel, 'An Examination of Environmental Federalism Under the 1999 Constitution' (2021) 1(1) *IJCLLR*; 12-26.

⁴¹ (n37) ss13 to 24.

⁴² *Ibid*, s6(6)(c).

⁴³ Article 24 ACHPR.

⁴⁴ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228.

challenge certain environmental harm and challenges as fundamental right. However, proof of excessive noise above the permissible decibel can only be established based on statutory provisions considering that the Constitution only makes general provision on environmental protection and not the specific forms of environmental pollution such as noise.

The National Communication Commission (NCC) Act 2003:

The NCC is a principal legislation governing telecommunication operation and businesses in Nigeria including activities such as licensing, marketing, quality of services, consumers' satisfaction and protection as well as installation and operation of telecommunication masts and towers.⁴⁵ The NCC Act establishes the Nation Telecommunication Commission, hereinafter referred to as 'the Commission' as an agency saddled with the responsibility of managing and handling the business of telecommunication and related matters in Nigeria.⁴⁶ The Commission is empowered in the Act to make and publish regulations including regulations on licensing and permits granted to telecommunication operators in Nigeria.⁴⁷

One of the regulations made by the Commission in line with the power is the Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers, (the Guideline) 2009. This Guideline regulates siting and location of base stations, generator houses within the station, and the measures to mitigate heat and noise pollution in base stations located in residential or commercial zones.⁴⁸ The Guideline provides the legal requirements concerning the siting and installations of telecommunication facilities and infrastructures including considerations relating to the surrounding buildings and general environmental safety. For instance, the guideline provides that telecommunication masts sited in residential premises must observe a 5 metres minimum set back from the nearest property.⁴⁹

This serves to ensure existence of wide space between telecommunication masts and residential buildings and houses so as to guard against any possible interference and disturbance such as vibrations and noise from generators used in the station. The Guideline further provides that generators in a base stations must be at least 5 m from demised properties (excluding the fence); be soundproof; be installed on good shock absorbers to minimise vibration; and have exhausts not directed towards a demised property.⁵⁰ The Regulation further provides that failure to comply with the guideline entitles the Commission to the right of removing the erring mast and the cost of removal borne by the owner of the mast.⁵¹ However, a major problem or shortcoming of the provisions of this Act is that it does not provide for right of individual occupiers to compensation for injury suffered as a result of noise emission.

The National Environmental Standards and Regulation Enforcement Agency (NESREA) Act, 2007

The NESREA Act is an Act for regulating and ensuring compliance with environmental standards and guidelines in Nigeria. The NESREA Act empowers the Minister of Environment to make regulations for the purpose of carrying out the functions of the Agency.⁵² Sequel to this provision and in view of achieving a cleaner and healthier environment, the minister of environment has made several regulations towards achieving the mandates of this agency; chief among these regulations is the National Environmental (Noise Standards and Control) Regulations, 2009. Made pursuant to the NESREA powers under section 34 of the NESREA Act, the Regulations seek to maintain a peaceful and healthy environment by controlling noise pollution through

⁴⁵ NCC Act, s1, The Technical Specifications for the Installation of Telecommunications Masts and Towers 2009; See also the NCC Act, s70.

⁴⁶ Ibid, NCC Act, s3.

⁴⁷ Ibid.

⁴⁸ The Guideline. S 3(3-6).

⁴⁹ Ibid, s13(6)(a-d)

⁵⁰ Ibid.

⁵¹ Ibid, s5(1) (b) and (2) (a-c).

⁵² NESREA Act, s34.

regulation of permissible noise levels and mapping out strategies and measures towards noise regulation and mitigation.⁵³

The Regulation further mandates owners of machineries or owners and occupiers of facilities where noise is inevitable, to periodically measure the emitted noise from the facility to ensure that the noise does not exceed the permissible level.⁵⁴ The report or result of the measurement shall also be furnished to the Agency for confirmation.⁵⁵ Under section 5, the Regulation provides that nobody is permitted to emit noise capable of disturbing the receptor or the neighbourhood. Any person who considers that any noise emitted or likely to be emitted is in excess of the permissible level may make a formal complaint to the agency.⁵⁶ Where the agency after due investigation is convinced that the emitted noise is actually in excess of the maximum level, the agency may serve the owner of the premises an improvement notice requiring an improvement of the actual facility or machinery causing the excess noise emission.⁵⁷ In instances where the noise is not mitigated, the Agency may do all that is necessarily reasonable to mitigate and abate the noise including taking steps to seal the erring facility.⁵⁸ This can be said to constitute the proper approach geared towards saving occupiers of adjoining premises and victims the hardship of continuously suffering noise emission and its unhealthy impacts. However, it is worthy of note that the Regulation is silent on right of victims to compensation for injury suffered before the noise is mitigated.

Another regulation of the NESREA specifically tailored to regulating noise level in base stations is the National Environmental (Standards for Telecommunications and Broadcast Facilities) Regulations 2011. The major purpose of the Regulation is to ensure that telecommunication operators comply with the set standards in erecting and operating masts in an environmentally conducive and friendly manner. The Regulation provides a setback standard distance of 6 metres from the perimeter fence of the nearest residential property or 8 metres where the premises is without fence.⁵⁹ The regulation mandates all generating sets to be sound proof and properly installed to avoid vibrations.⁶⁰ These provisions are measures to ensure that telecommunication mast operators and providers of communication services do not interfere with the right of occupiers of adjoining premises in use and enjoyment of their land.

Procedure for Lodging Complaint of Noise Emissions to the NCC and NESREA

Lodging a formal complaint about noise pollution in Nigeria requires the aggrieved victim to approach either the Nigerian Communications Commission (NCC) and the National Environmental Standards and Regulations Enforcement Agency (NESREA). NCC handles telecom-related disturbances (e.g., mast/generator noise from service providers), while NESREA enforces broader environmental noise regulations. However, the procedure in both agencies require the aggrieved person to formally document the complaint as well as provide supporting evidence and facts in a clear and logical manner. NESREA requires the aggrieved to file a written complaint detailing the nature of the noise pollution (e.g., generator roaring 24/7, vibration, smoke), the exact address of the mast site, the name of the telecom operator or company and how it impacts the adjoining premises.⁶¹

The complaint which may include evidence of excess noise can be submitted at NESREA field office in a state where the cause of action occurred or at the NESREA head office. Upon receipt of the complaint, NESREA's enforcement unit deploy inspectors to conduct an environmental audit or site assessment. If the generator noise exceeds permissible limits stipulated by law, NESREA will issue an Abatement Notice or Compliance Notice forcing the operator to soundproof the generator house, upgrade equipment, or restrict running hours. Failure to

⁵³ National Environmental (Noise Standards and Control) Regulations, s 1(a-c); s2(1-9) & s3.

⁵⁴ Ibid, s4.

⁵⁵ Ibid.

⁵⁶ Ibid, s10.

⁵⁷ Ibid, s11.

⁵⁸ Ibid, s12.

⁵⁹ National Environmental (Standards for Telecommunications and Broadcast Facilities) Regulations 2011; s9(3)(a).

⁶⁰ Ibid.

⁶¹ (n52), s6.

comply to this notice can result in administrative sealing of the premises or legal prosecution against the erring operator.⁶²

The NCC specifically requires an aggrieved victim to lodge a formal complaint. Where the operator fails to heed the complaint, the complainant can escalate the complaint to the NCC by calling the agency through its toll free line, submitting the complaint to the agency's official website or submitting a complaint physically to the agency's physical office. Upon receipt of the complaint, the NCC reviews the site's authorization and compliance with the technical code of practice, engages the operator to resolve the operational emission or face regulatory sanctions.⁶³ In instances where the aggrieved victim feels unsatisfied, the Act provides the victim the opportunity of filing a formal legal civil action usually in private nuisance in a State or Federal High Court, seeking for redress in form of injunction and damages. This can also happen where the administrative agencies fail to act within a reasonable timeframe towards abating the noise emission or where the victim decides not to explore the option of approaching the agencies.

Occupiers' Rights in Private Nuisance against Noise Emission in Nigeria

A Victim of noise emission in Nigeria may institute an action in private nuisance in a state or Federal High Court against the operator of the facility responsible for the noise emission, seeking for injunction or damages or both. Private nuisance seeks to protect the rights of private individual land and property owners or occupiers from substantial interference with the peaceful possession and enjoyment of land as a result of harmful activities of owners and occupiers of adjoining premises.⁶⁴ A Claimant who brings an action in private nuisance must prove that the Defendant's harmful action has caused, causes or is capable of causing physical damage to the property or some substantial personal discomfort(s) including loss of earnings and amenity to his property. In the case of *Abiola v Ijoma*⁶⁵, the claimant's claim is that the constant noise and nauseating smell from poultry kept by the defendant in the defendant's land which adjoins the claimant's land, constitute nuisance and substantial interference to the claimant's enjoyment of his land. The court agreed with the claimant and held that the noise and smell from the defendant's land is not a mere and trifling inconvenience but substantial enough to constitute nuisance.

In the case of *Elohor v. Idahosa*⁶⁶, the court identified two basic components of an actionable private nuisance. These include (b) reasonableness / balance considering the current circumstance (a) substantial and sensible material damage.

Reasonableness / Balance Principle

The reasonableness / balance theory serves as a standard for fair decision making while weighing competing interests so as to reach a proportionate outcome.⁶⁷ The courts sometimes are faced with determining the extent of interference that is unreasonable to constitute an actionable claim. The law of nuisance does not entitle an occupier absolute freedom from every disturbance considering the defendants and owners of adjoining land have legitimate interests in operating machineries necessary for generating communication services.⁶⁸ Thus, the task of the courts is in determining whether a balance has been struck in the use and enjoyment of their property by the claimant and defendant or whether the defendant's activities are unreasonable. One of the grounds considered in *Abiola*'s case is the right of the defendant in the use and enjoyment of his land. However, the court held that in undertaking that consideration, the nature of the premises has to be taken into consideration to determine whether or not the use to which the defendant puts his land which affects the claimant's use and enjoyment of claimant's land can be said to be unreasonable.

⁶² Ibid, s1(1)(1).

⁶³ Ibid.

⁶⁴ *Abiola v Ijoma* (36).

⁶⁵ Ibid.

⁶⁶ (1992) 2 NWLR (Pt. 223) 323.

⁶⁷ A Adegbite and T Olorunnipa, 'Torts of Nuisance in Nigeria and the Relative Standard of Proof Per Locality' (2022) 6 *AJLHR*, 168.

⁶⁸ Ibid.

Considering that an occupier has the right to quiet possession and enjoyment of his property, and telecommunication mast and base station operators possess legitimate rights to the economic use and enjoyment of their premises including the right to use and power generators for the purpose of generating and enabling communication services, the mode of determining whether telecommunication mast owners and operators have put their land to unreasonable use to the annoyance or disturbance of an aggrieved occupier of adjoining premises is in considering whether or not the noise emission exceeds the permissible decibel for the concerned premises.

Substantial and Sensible Material Damage

This implies any damage that is substantial causing a material reduction to the value and use of a claimant's property. To sustain an action under this heading, the act of the defendant must not be trivial such as occasional smoke from a neighbour's kitchen, noise from neighbour's playing kids or smell from a neighbour's cooking. It must be a substantial, material and recurring activities capable of causing significant and material disturbance. In instances where the claimant's action is based on sensible and material damage, the nature of the neighbourhood where the act of nuisance occurs is immaterial. In *St. Helen Smelting v Tipping*,⁶⁹ it was held that the fact that the act of nuisance complained of occur in an industrial area does not in any way minimize the liability of a defendant whose smelting company emit fumes that damaged the claimant's trees and shrubs. In Nigeria, this principle was applied in the case of *Alame v. Shell Plc*⁷⁰, the court held that cases of nuisance founded on un-remediated spills are substantial and actionable under Nigerian laws.

The claimant must also establish that the defendant's actions such as effluent emission, smoke, vibration or excessive noise interferes with his peaceful enjoyment of his land⁷¹. The interference or disturbance complained of must be continuous, recurring and substantial rather than an isolated temporary activity. Thus, in the case of *Vanderpant v Mayfair Hotel Co. Limited*, the court per Luxmore J held that

'Every person is entitled as against his neighbour to the comfortable and healthy enjoyment of the premises occupied by him, and in deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical discomfort of human existence, nor merely according to elegant or dainty modes and habits of living....'⁷²

Occupier's Challenges in Enforcing Private Nuisance Claims in Nigeria

The right of private individuals to maintain action in tort of private nuisance in competent courts against interferences to the use and enjoyment of their land in Nigeria is recognized in the Common Law. The principles laid down in cases like *Abiola v Ijoma*⁷³ and *Eloho v Idahosa* clearly recognizes this right. However, some substantive, procedural and socio-economic challenges constitute barriers to victims in seeking redress in damages and injunctions.⁷⁴

A major requirement that must be satisfied by victims of private nuisance is that they possess the requisite legal standing to institute an action. Thus, a claimant must possess a proprietary or possessory right such as ownership right in statutory right of occupancy, tenancy rights or leasehold rights to maintain an action. This implies that licensees, casual visitors and family members other than the recognized rent paying member does not possess any right of action irrespective of their level of suffering occasioned by the nuisance activity.

Apart from the legal standing requirement, the claimant must establish an actionable cause of action by establishing a substantial and unreasonable interference by the defendant's activity in the given circumstance.

⁶⁹ (1865) 11 HA Cas 645.

⁷⁰ (2023) EWHC 2933 (KB)

⁷¹ VI Uzoma, 'The Need for Legal Intervention in Addressing the Impact of Noise Pollution on Reproductive Health in Nigeria' (2024) 2(1) *LexScriptio A Journal of the Department of Jurisprudence and Public Law*, 348-366.

⁷² *Vanderpant v Mayfair Hotel Co. Limited* (1930) 1Ch 138.

⁷³ (n64).

⁷⁴ OC Obiora and AA Bashir, 'Environmental Law Enforcement in Nigeria Challenges: Proposed Reforms and Notable Achievement' (2025) *Environmental Behaviour and Sustainability*, 92.

In certain cases especially where the cause of nuisance is technical, the evidential proof requires expert witness. Proving vibrations from structural damage from heavy equipment vibrations, toxicity level of smoke emissions or demonstrating that noise emissions exceed the legal permissible decibel require expert witness to conduct specialized technical audit. The defendants sometimes contend that the reason the claimant suffers in the way and manner claimed is as a result of the claimant's sensitive nature. In instances of this nature, expert evidence is also required to discredit this line of defence by establishing that the claimant does not possess hypersensitive conditions. This forces the already disadvantaged and affected claimant to incur additional out of pocket expenses to discharge the evidential proof requirement that he who asserts must prove.

Judicial delay and weaknesses in enforcement machineries also constitute problems to claimants in private nuisance actions. Congested courts and lengthy appeal processes elongate the number of years a private nuisance action takes to be determined. Obtaining simple interim or interlocutory injunctions to restrain an ongoing harmful nuisance takes time and rigorous processes to secure same. When the orders are eventually secured, the impact of weak enforcement often come to play where defendants incessantly flout court orders and go scot free owing to lapse and weakness in enforcement, and sometimes, corruption among enforcement agents. Also, the reluctance in enforcing court orders in Nigeria against certain defendants, especially licensees considering statutory authority of the licensees usually work hardship against claimants in cases founded on private nuisance.

Implications for victims of Noise Emission from Telecommunication Masts and Base Stations in Nigeria

Where noise emission affects a private land owner's use and enjoyment of his land, action in private nuisance can be sustained. Usually, the areas of contention by occupiers and owners of adjoining premises against telecommunication masts and telecommunication mast companies in Nigeria is on the level of noise emission from the masts.⁷⁵ With the epileptic nature of electricity supply in Nigeria, telecommunication companies make provision for use of power generators to ensure a steady power supply and transmission services. These power generators emit noise from the day of their installation or in the nearest future after some wear and tear and reduction in quality, resulting from constant usage. It would be expected that the emitted noise may constitute some form of disturbance to occupiers of adjoining premise as occupiers of such premises may not expect the same level of tranquil and noise free neighbourhood like other land owners in areas without telecommunication masts. However, where the noise emission becomes substantial and unreasonable, the courts may find in favour of the affected claimants / occupiers of adjoining premises.

In order to succeed in an action in nuisance, the affected occupier must establish a proprietary or possessory right to the adjoining property claimed to have been impacted by noise emission. Persons who do not possess these rights cannot succeed in private nuisance actions in spite of their level of suffering. The task of discharging the evidential burden of proof of excessive noise emission is an onerous one often requiring expert evidence in most cases. In other words, proof of excessive noise beyond the permissible level in most cases are established through expert evidence wherein noise is measured in decibels to determine whether the legal permissible decibel has been exceeded. Considering the evidential proof requirement that he who alleges must prove⁷⁶, the task of procuring an expert to discharge this task rests on the individual occupier who may be hindered by the pecuniary requirement.

Establishing actionable noise pollution through expert evidence against telecommunication service providers and mast operators presents certain legal and practical challenges for private individuals and occupiers of adjoining premises.⁷⁷ A claimant may have a good case but fail on technical grounds for want or failure to procure the needed expert to prove his case.⁷⁸ The cost of procuring expert evidence such as scientific testing,

⁷⁵ RN Okparanma, BO Briggs and CA Asor, Mapping Sound Levels at Selected Telecommunication Base Stations, Churches and Mosques in Port Harcourt, Nigeria' (2023) 5(1) *Journal of Newviews in Engineering and Technology*; 1-11.

⁷⁶ Evidence Act, 2011 s131.

⁷⁷ J Nwazi and B Obadoni, 'Legal and Practical Challenges of Combatting Noise Pollution in Nigeria' (2025) *Pellucid International Journal of Social Sciences, Management and Humanities*, 148-168.

⁷⁸ B Seriah, 'A Critical Analysis of the Burden of Proof Under the Nigerian Evidence Act' (2024) <<https://www.ssrn.com>> accessed 24 August 2026.

engineering assessments and examinations, valuation reports and forensic analysis requires huge out of pocket expenses.⁷⁹ This places a poor and less privileged claimants at a disadvantaged positions notwithstanding their good cases. This is further compounded when the defendant is better placed financially, capable of procuring a higher expert to counter the findings of the claimant's expert.⁸⁰ In actions founded on nuisance to challenge noise emission from telecommunication masts and base stations in Nigeria, the individual occupiers are often disadvantaged financially compared to the telecommunication service providers that can afford better and more sophisticated experts. Also, delay and technicalities associated with judicial proceedings as well as weaknesses in enforcement mechanisms also constitute challenges to affected occupiers.

The scenario of delay in judicial proceeding coupled with unequal financial power between telecom operators and victim of noise pollution played out in the case of *Helios Towers Limited v. Mr. Isiaka Bello*⁸¹. The bone of contention in the case is that Helios Towers Limited- defendant installed a mobile phone transmission mast near the claimant's residential building at No. 3 Adebayo Street, behind Dental Centre, Ado Ekiti, Ekiti State. The claimant sued the defendant at the Federal High Court on the claim that the phone transmission tower is interfering with his use and enjoyment of his property as a result of the noise and microwave emissions. The trial court found in favour of the claimant but the defendant appealed the judgment. This appeal may take donkey years to be resolved thereby placing the claimant / respondent on a long string of legal expenditure. In some cases, the respondent may choose to abandon the case when his resources can no longer cater for the legal fees.

Another problem that may bedevil private occupiers in procuring expert evidence is that a witness cannot simply be designated as an expert unless he is capable of displaying and demonstrating the necessary knowledge, skill and technical known how common and known with experts in that field⁸². The task of establishing whether or not a witness possesses the requisite knowledge for experts in that field lies in the domain of courts⁸³. Where the court is of the opinion that a presented witness does not possess the requisite knowledge of experts in the field or profession where he seeks to represent, the evidence of the witness no matter how relevant, may not be admissible.⁸⁴ Thus, in spite of the fact that Evidence Act allows for proof of the existence of a fact through evidence including expert evidence, the ability to procure an expert to discharge technical proof as well as the probative value a court accords an expert evidence is solely determined by the court.⁸⁵ Based on this, an occupier may face the pecuniary challenges of procuring an expert witness to establish the fact of excessive noise emission from adjoining telecommunication masts and base station, but, the level of recognition accorded the witness by court may not conform to the desires of the claimant.

The public nuisance and interest nature of the outcome of the complaints in the legal and regulatory frameworks for noise emission regulation and control in Nigeria is yet another challenge. For instance, the National Environmental (Noise Standards and Control) Regulation, 2009 affords private individuals the opportunity of filing of excess or perceived excess noise level in line with section 10 of Regulation which provides that any person may complain to the Agency in writing if such a person considers that the noise level being emitted or likely to be emitted, may be higher than the permissible noise levels under this Regulations or reaching disturbing proportions.⁸⁶ Upon receipt of a complaint of this nature, the Agency carries out due investigation and substantiation, take all necessary steps to ensure that the noise level is abated or controlled within permissible level under the Regulations.⁸⁷ Also, the Regulation imposes a fine of Five Hundred Thousand Naira; and an additional fine of Ten Thousand Naira for each day the offence subsists where the offender is a body

⁷⁹ A Odusote, 'Critique of Admissibility of Expert Witness in Justice Delivery among courts in Nigeria in Comparison with United States of America and United Kingdom' (2024) 12(1) *The Cradle of Knowledge African Journal of Educational and Social Science Research*, 28-37.

⁸⁰ Ibid.

⁸¹ (2015) JELR-40493 (CA).

⁸² Evidence Act, 2011 s68.

⁸³ *Omisore v Aregbesola* (2015) LPELR-24803 (SC).

⁸⁴ *Shell Petroleum Development Company v Otoko* (1990) 6 NWLR (Pt. 159) 639.

⁸⁵ *Senator Rashidi Ladoja v Senator Abiola Ajimobi* (2016) LPELR-40658 (SC).

⁸⁶ National Environmental (Noise Standard and Control) Regulation, 2009 s10 (1).

⁸⁷ Ibid, s10 (3).

corporate.⁸⁸ However, the regulation does not provide for the power of private individuals to be awarded compensation in any circumstance. The fines and penalty fees all go to the government through the regulator.

The NCC Act on the other hand also lacks provisions on compensation to private individuals. The Act empowers the Commission to impose fines on erring operators for breach of environmental and operational requirements.⁸⁹ In spite of these fines, the Act is silent on compensation to private citizens for any injury suffered by the citizens arising from the impact of such breach. The only areas where the Act provides for compensation to private citizens is where damages arise from entry into land, land acquisition or any damage to property. This constitutes a discouragement to affected citizens who may spend resources in bringing an act of environmental breach to the agency, but are left with nothing to assuage their loss and injury at the end of the day.

CONCLUSIONS

The presence of telecommunication masts and base stations in Nigeria has improved network and digital connectivity, increased business frontiers for both communication service operators and consumers, as well as positively impacted the nation's economy. These advantages notwithstanding, the proliferation of telecommunication masts and base stations present grave environmental and personal problems such as noise emissions to occupiers of premises adjoining telecom masts and base stations. The impact of noise emission and vibrations from power generating sets used in running these masts and stations not only constitute severe health concerns ranging from deprived sleep and fatigue, it also impact the value of the adjoining property thereby generally affecting the right of the adjoining property owners to the peaceful possession and enjoyment of their property. While legal avenues abound in statutory frameworks and Common Law torts of private nuisance, weakness in enforcement mechanisms constitute major challenges. Affected occupiers are mostly deterred by substantial and procedural onerous requirements such as discharging the evidential proof usually through expensive expert witnesses, protracted litigation and weakness of enforcement channels and corruption among enforcement agents. Also, omission of compensation provisions to affected private citizens in the relevant statutory and regulatory frameworks constitute discouragement to affected occupiers in lodging complaints of noise emission to the regulators.

RECOMMENDATIONS

Based on the examined shortcomings, the research recommends the following regulatory reforms as means of ameliorating the hardships of affected occupiers:

- i. The statutory and regulatory provisions on setback between telecommunication base stations and adjoining premises as well as the provision on use of sound-proof generators and alternative sources of energy should be enforced through strictly measures including imposition of punitive fines and prosecution of directors and officers of erring base stations.
- ii. The applicable statutory and regulatory provisions should be amended to accommodate compensation to affected private citizens (occupiers of adjoining premises).
- iii. There should be created, specialized tribunals to handle cases of environmental pollution including noise emissions so as to reduce the lengthy litigation time in pursuing cases founded on environmental induced private nuisance cases in Nigeria.

⁸⁸ Ibid, s17 (2).

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