

Short notes on:

Neighbour law: what constitutes a nuisance

Introduction

Today one often hears of complaints of nuisances to one's property whether residential or commercial. However, what exactly does the law recognize as a nuisance, and what are the possible remedies available? This article will briefly explore what constitutes a nuisance and the requirements.

Definition

A nuisance can be defined as any form of interference or encroachment on a person's right to the use and enjoyment of their property, particularly immovable property. Examples of these encroachments can include noise, pollution or physical obstructions such as tree roots. Our Courts have, however, qualified this definition insofar as a "nuisance" must be reasonable and the inconvenience must be material: *"more than fanciful, more than one of mere delicacy or fastidiousness; that it was inconvenience materially interfering with the ordinary comfort, physically, of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions."*¹

Furthermore, although there is no decisive definition of a nuisance it should be noted that in some cases, there may be clear rules or regulations which set out what may be nuisance, such as in a Sectional Title Scheme or Home Owners Association.

Test for reasonableness

As a point of departure, the law essentially looks at what is considered a reasonable encroachment as there is generally no hard and fast rule. Reasonableness involves the balancing on the one hand of a person's right to the use and enjoyment of their property against the rights of the other party on the other hand. However, a Court will consider various factors in considering what is reasonable²:

¹ Vogel v Crewe and another [2004] 1 All SA 587 (T).

² Gien v Gien 1979 2 SA 1113 T.

1. Locality of the nuisance;
2. Materiality of the infringement;
3. Personality of the Plaintiff or Applicant – they should not be overly sensitive;
4. Motive;
5. Proportionality;
6. Practicality of reducing the harmful effects; and
7. Least restrictive means to rectify the situation.

The above are not rules or requirements, but rather intended as guidelines. However, it is clear from the above that a nuisance must be a real and material intrusion on one's rights and the Applicant or Plaintiff must show some reasonable tolerance for the ordinary use of the land and expect certain circumstances³. For example, a person living in the middle of the city would be hard pressed to complain about noise from neighbours or other residents, as it is an expected occurrence. Similarly, in *Allaclas Investments (Pty) Ltd and Another v Milnerton Golf Club and Others*⁴ the plaintiff's property was on a golf course and could therefore to some extent expect and tolerate incoming golf balls from other residents and neighbours.

Remedies

Generally, the most common remedy to nuisance is to interdict the person causing it, thereby prohibiting the conduct. However, an interdict may only be used where there are no other possible remedies available. Another alternative remedy is one for damages, if applicable and property damage has been sustained as a result of the nuisance.

Conclusion

Nuisances can vary greatly and are dependent on the subjective circumstances of the property owner. However, in order to be actionable, it must be an objectively material infringement. Thus, it is ideal to try and resolve such disputes amicably between the parties. Litigation is both time consuming and costly and should be utilised as a last resort. Contact SchoemanLaw Inc for assistance with any property -related and neighbour issues.

³ *Allaclas Investments (Pty) Ltd and Another v Milnerton Golf Club and Others* 2008 (3) SA 134 (SCA)

⁴ *Ibid.*

