

The Law of Nuisance as it relates to the operations of The Trinidad and Tobago Solid Waste Management Company Limited (SWMCOL)

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I write this article both as a concerned councillor and a practicing Attorney-at-Law of the city of Port of Spain. In recent times our city has been covered with smoke, haze and smog emanating from uncontrollable fires set within the landfill located in southern Port of Spain i.e. the Betham Landfill. Anyone that uses our city on a daily basis would have noticed the vast amount of air pollution and would have wondered what was going on at the landfill. This was indeed a repeat of a similar occurrence which took place in January of this same year.

As a representative of persons that reside within our capital city I view the actions and/or the omissions of the bodies charged with the management of the betham landfill namely SWMCOL as grossly inept and even bordering on professional negligence. Notwithstanding, my heart goes out to the residence of Betham Gardens, Sealots and environs whom have been made to suffer through this ordeal. It is therefore with these residents in mind that I am compelled to write as SWMCOL's actions and/or omissions are proving to be a Nuisance in Law.

Now Nuisance is a tort to land and an interference with rights over land arising from non-reasonable use of land. The residence of Port of Spain South would be well within their rights to seek compensation from SWMCOL and any other body charged with the responsibility of properly managing the said landfill. The essence of their claim in nuisance would be for interference with the quiet, peaceful enjoyment of their homes.

This type of nuisance arises when the level of interference is such that the comfort enjoyed by the average person is affected. The degree of interference must be such as to be a discomfort to any average person in the premises affected. Much like the man on the Clapham Onibus, in Colloquial terms we may say the man on the priority bus route maxi, he being the hypothetical reasonable person.

It may be argued that the use of the land as a landfill site in a mixed character neighbourhood is not of itself an unreasonable use of the land, however it is submitted that a reasonable use of land may become unreasonable if the extent of that use becomes excessive or abnormal. It begs the question has the use of the land in the Betham as a landfill become excessive?

It is trite law that the fact that a defendant has exercised all due care is no defence, further it is not a defence that the residence of Port of Spain South brought the nuisance upon themselves by occupying land near the source of the nuisance.

It is this writer's submission that there is a sufficient duty of care owed by SWMCOL to the residence of southern Port of Spain to conduct its affairs so as not to become a nuisance at law, and in particular to secure its premises so that no fires would be set by its servants, agents and/or any third parties. SWMCOL's failure has negatively affected the enjoyment of the residence daily lives and as such they should be compensated accordingly.

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