

## **Sports Arenas and Noise Pollution: A Critical Analysis of Bringing Class Actions against the Nuisance**

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### **Abstract**

*Noise is a necessary and unavoidable bi-product of sports arenas. Due to the number of excited and passionate persons, that temporarily occupy such stadia on a consistent basis, are exposed to destroy or impair their sense of hearing either permanently or temporarily. The noise affects different categories of victims including spectators, residents around the stadium and the workers or employees at/of the stadium. These categories of victims around the stadium may decide to carry out class actions against stadium owners or stadium authorities to get some compensation for this nuisance and the workers can also sue individually for the breach of safety regulations and the allowance of occupational hazards and the same class actions are also available for spectators despite the fact that noise is a natural consequence of going to a sporting event. Nevertheless, there is also the consideration of the natural risk of living around a sports stadium where the emanation of noise is quite predictable. This work, therefore, goes into an in-depth debate as to whether persons who choose to work, live or visit sporting events may be granted any right to sue for any possible injuries either temporary or permanent to their hearing because of their knowledge of the potential risk of living, working or visiting a sports stadium. In a nutshell, this work asserts that government through municipal laws and policy should provide legal remedies for workers in stadiums, stadium spectators and residents outside but nearby stadiums irrespective of the principle of volenti non fit injuria.*

**Keywords:** Noise Pollution, Stadiums, Spectators, Workers, Class Action

## **1. Introduction**

Sporting activities usually take place in well-designed arenas for the conducive conduct of the sporting activity. There are usually specifications as to how the sporting arenas should be designed in terms of technical outlook either in terms of size, width, size of football posts length or the type of grass or platform to be used for the arena.

The emphasis on the technical designs for these stadia usually overshadows or prevents sports and municipal authorities from focusing on noise pollution as an environmental hazard consistently generated from spectators, instruments and facilities from sports stadiums.

The effect of the noise capable of impairing the hearing of an average human being has been estimated at 85 decibels which is lower than the average decibels generated from sport stadiums which then accentuates a potential hearing impairment epidemic for persons in the categories of sports stadium workers, spectators and residents of houses immediately around such stadiums.

This paper; therefore, posits that legal remedies or damages preferably through class actions representing the identified class of victims above be incorporated in municipal laws and environmental policies of respective countries irrespective of the legal maxim of *volenti non fit injuria*.

## **2. Literature Review**

This paper critically reviews an article by Donuglee Lee (2010) on the topic to find out interesting themes and research gap/s thereunder. Lee articulates that noise at baseball stadiums, after a survey was conducted with 344 participants on the effect of noise generated from sports stadiums and its potential effect on causing damages to the hearing of humans or causing Tetanus, is injurious to human health; however, he failed to recommend a class action by such victims claiming damages or compensation in money.

Brian Homewood also examined the effect of noise pollution from stadiums in the article Vuvuzelas banned from European soccer (2010) and agreed with the position that Vuvuzelas should be banned because of the noise generated as regards its effect on the drowning of the emotional connection between the

spectators and the game but again failed to identify such noise as an environmental hazard and his recommendation for a class action against the nuisance.

Derek J. Engard in the article *Noise Exposure, Characterisation, and comparison of three football stadiums* where it was discovered that noise generated from stadiums is capable from impairing the hearing of an average individual. The article also recognises the workers as victims of noise pollution from sports stadiums but does not suggest remedies for the workers and failed to identify spectators and residents around stadiums as spectators.

Dominique Wikins in the article *the effect of stadiums on communities with a focus on housing* (2016) where the author considered overcrowding from stadiums as a reason for the noise pollution generated but does not identify victims and legal remedies for those victims.

To fill the niche, this paper aims to focus on the nuisance produced by sports stadiums impairing sense of hearing in humans and arguably entitle victims thereof to bring a class or collective action against the perpetrator for damages or compensation in money.

### **3. Research Methodology**

This paper adopts socio-legal theoretical framework which examines the relationships between law and society. Interdisciplinary research methodology is deployed with analysis drawn from international and municipal environmental laws, municipal sports laws, sports regulations, policies, and programmes of respective countries that are largely utilised to critique the excessive use of sports facilities to prevent or minimise noise pollution created by sports arenas. The interdisciplinary research methodology is also utilised to critique existing regulatory framework in environment and sports specially to expose the lacunae in the regulation to prevent noise making around sports stadiums and the protection of workers, spectators, and nearby residents and advocating for class action remedies. This paper adopts a qualitative or library based research approach consequently relying on secondary data to find out if a

case could be prepared to bring a class action by victims of the noise pollution for damages.

#### **4. Noise Pollution**

Noise pollution can be referred to as an excessive high volume and obnoxious sound that can have negative effects on human health and the quality of the environment<sup>1</sup>. Noise pollution can also be referred to as a loud unwanted and disturbing sounds that affect the well-being of humans and other animals.<sup>2</sup>

Noise pollution has been severally described by statutes in several jurisdictions as a variant of air pollution present in the atmosphere in such level of concentration as may be or tend to be injurious to property, human beings or other living creatures, plants living in the immediate environment.<sup>3</sup>

Scholars suggest that most pollution from noise come from some specific sectors of the economy which are usually in construction, aviation and even entertainment and they are largely responsible for noise pollution because the noise generated from these sectors of the economy exceed the maximum number of decibels.

There is a consensus that the maximum of number of decibels that amounts to noise will be around 85 decibels because these decibels of sound can damage or impair humans or animals' ability to ear. In fact, scholars have estimated that wails of siren create about 120-140 decibels of noise and in the case of loud rock concerts can generate noise of about 110-120 decibels which then suggests that any amount of sound exceeding the 85 decibels is a potential danger to the health of every human if exposed to such sound consistently.<sup>4</sup>

Also, the National Institute on Deafness and other communication disorders in the United States have advocated repeatedly that long or repeated exposure to

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<sup>1</sup>Jerry .A. Nathanson, "Noise Pollution" Britannica updated 2020  
<https://www.britannica.com/science/noise-pollution> last accessed on 26/5/2020.

<sup>2</sup> Morgan Stanley, "NoisePollution" National geographic updated 2019  
<https://www.nationalgeographic.org/encyclopedia/noise-pollution/> last accessed on 26/5/2020.

<sup>3</sup> Section 2(a) of the Air (Prevention and control of pollution) Act 1981 in India.

<sup>4</sup>ibid 2.

sound at or above 85 decibels can cause hearing loss to humans. The National Institute for Occupational Safety and Health Administration in the United States also emphasized the 85 A-weighted decibels as the maximum amount of noise exposure that a human can experience at the work place.<sup>5</sup>

The effects of noise pollution are quite severe on humans, animals and the environment and it is estimated to affect millions per day globally and the most common effect of noise pollution is that it generates the Noise Induced Hearing Loss (hereinafter, NIHL).<sup>6</sup>

There is also the tendency for those exposed to excessive noise to develop high blood pressure, heart diseases, sleep disorders and excessive stress. The impact of the noise pollution cuts across all sorts persons including children because there is evidence to suggest that children that live closer to airports or streets have been discovered to be suffering from stress, and impairment of their memory.<sup>7</sup>

Noise pollution also affects the environment because of its effect on animal that decide to migrate from their natural habitat to new areas to avoid the excessive noise and this in effect affects the ecosystem because the manure deposited by animals in wild life which helps with the ecosystem in a certain area becomes ineffective or rather empty and other animals responsible for the pollination in plants may excuse themselves from areas where their lives are threatened by noise.<sup>8</sup>

The animals in the state also have their share experience of noise pollution especially from the noise from ships on seas and even activities of the oil and gas industry in terms of exploration and seismic surveys also affect the animals in water. However, this research focuses on the adverse effects of noise

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<sup>5</sup>Daniel.j.Fink, "What is a safe noise level for the Public" (2017) *Am.j Public health journal* vol 107(1) 44-45 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5308171/> last accessed on 18/3/2021.

<sup>6</sup> Morgan Stanley, "NoisePollution" National geographic 2019 <https://www.nationalgeographic.org/encyclopedia/noise-pollution/> last accessed on 26/5/2020.

<sup>7</sup> Ibid.

<sup>8</sup>Dr.Kristen Parris and Robert McCauley, "Noise pollution and the environment" 2016 <https://www.science.org.au/curious/earth-environment/noise-pollution-and-environment> last accessed on 26/8/2020.

pollution, produced by sports facilities, on the loss or impairment of humans' sense of hearing.

## 5. Community Noise Paradigm

There are several classifications of noise pollution but for the purposes of this paper focus would be placed on community noise which by definition of the World Health Organisation falls within the purview of the noise generated from sports arenas or stadiums since community noise can be defined as noise emitted from all sources except noise at the industrial work place.<sup>9</sup>

The World Health Organisation also recognises expressly that in many jurisdictions there are many ceremonies, festivals, and entertainment events which had become a fundamental core of culture in many jurisdictions which is usually characterised by loud sounds, music impulsive sounds.<sup>10</sup>

These sounds largely affect young persons who patronise cinemas, concerts, discotheques, video arcades, cinemas, amusement parks and spectator events and are exposed to noise that consistently exceeds 100 decibels which could potentially lead to hearing impairment.<sup>11</sup>

The World Health Organisation also emphasized that the prevention of community noise especially in entertainment venues or spectator event should not be limited solely for the protection of attendees of such events but also the workers or employees of those entertainment venues with established occupational safety standards.<sup>12</sup>

Jurisdictions such as Kenya have enacted laws to cater to these shades of problem by stating that for all parties and social events:

*“That any person in charge of a party or other social event which occurs on a private or public property shall ensure that the party or event does not produce noise in a loud,*

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<sup>9</sup>BriggittaBerglund,ThomasLindfall,`Guidelines to community noise` WHO Guidelines for community noise April 1999 <https://www.who.int/docstore/peh/noise/Comnoise-1.pdf>last accessed on 18/3/2021.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

*annoying or offensive manner such that noise from the party interferes with the comfort repose, health or safety of members of the public within any building or, outside of a building, or recklessly creates the risk thereof at a distance of 30 metres or more from the source of such sound”.*<sup>13</sup>

The foregoing is an attempt by the Kenyan jurisdiction to forestall the noise epidemic consistently generated from social gatherings which include sporting arenas to help protect the members of the immediate community by criminalising the emission of such noise which should obviously relate to the sports arenas.

The foregoing observations by the World Health Organisation as to the excessive noise generated from spectator events birthed the investigation of noise generated from sports arenas and the legal remedies afforded to victims of such noise.

## **6. Noise Pollution Generated from Sports Arenas**

The author of this paper is convinced that because of the passionate expressions of passion generated by fans during sporting games it will be hypocritical to turn a blind eye to the excessive noise generated by fans both inside and outside the sports arena.

This is for instance evident in the research done on baseball stadiums in the United States derived from four games and from different sections of the stadium where surveys were also carried out on 344 participants in those games where it was discovered that in an average baseball stadium during a live game the noise generated are high enough to cause hearing damage or tinnitus applying the rule of 85 decibels for 8 hours with a 3 decibel [db] exchange rate.<sup>14</sup>

The noise generated within the sporting arena is obviously expected because the game is live and the expression of passion, love, joy, disappointment is very raw and live also which is a reason why racist slurs are very common during live

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<sup>13</sup> Section 9(1) of the Environmental Management and coordination (noise and excessive vibration Pollution control regulations 2009.

<sup>14</sup> DongukLee, Woojae Han ``Noise levels at Baseball Stadiums and Spectators attitude to noise'' Noise Health 2019 Mar- Apr 21(99) 47-54  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7158899/> last accessed on 18/3/21.

games but there is an ongoing trend of noise by fans even after the games are over outside the sporting arena to the detriment of the health of the persons living around or working in those sporting arenas and even the spectators.

Another disadvantage to the persons staying around the stadiums and the detriment to their health is that the games or sports events are usually very closely scheduled which creates some form of anxiety for persons staying around those stadiums for instance in countries where Soccer is popular there will be most probably be a professional league where games are played either once or twice a week which creates anxiety and possible recognised effects as mentioned above to the health of the persons in the stadium or persons living just around the stadium.

There are indications that for instance at the world cup in South Africa may have been the most guilty in terms of noise pollution because of the ‘Vuvuzela’ instrument which was a domesticated trumpet for the adoration of fans during football games which was so excessive in noise making depending on the type of force exerted or blown into the Vuvuzela but the Vuvuzela was eventually banned because of the excess noise generated because the noise had crossed unbearable limits in stadiums all over the world that regulators were tempted to ask fans to come with ear plugs during games.<sup>15</sup>

The noise generated in stadiums has become such a problem that Soccer in the United European Football League have decided to regulate the noise in stadiums because evidence suggests that noise generated from stadiums have now reached up to 100 decibels which has exceeded the threshold of noise pollution which is 85 decibels and also the Vuvuzela has been estimated to generate about 130 decibels of sound at a distance of 6 feet from the device opening which clearly endangers the hearing of other spectators in the stadium.<sup>16</sup>

The apparent noise generated from stadiums necessitated and required the regulation by the Union of European Football Associations [hereafter, UEFA] 2016 concerning noise levels and instruments for instance states that all

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<sup>15</sup>Alarm Bands, ‘‘UEFA Regulations concerning noise levels and instruments’’ 2017 <https://alarmbands.com/football-stadium-noise/> last accessed on 26/5/2020.

<sup>16</sup> Ibid.

spectators should not conduct themselves in any manner that injures, harms, endanger, obstruct, irritate or cause damage to others .<sup>17</sup>

The UEFA rules further state:

The following items shall not be brought into the stadium, unless authorised as and when relevant by the UEFA, French Football Federation ;

(n)electronically, mechanically, or manually operated sound emitting devices such as Megaphones, Klaxon or Vuvuzelas.<sup>18</sup>

The regulation also bans the use of instruments such as the horns, pipes, trumpets and Vuvuzelas from being into the stadiums and these instruments were banned because apart from being sources of excessive noise in stadium to the detriment to the health of other spectators or persons living around the stadium these instruments have been used repeatedly to injure other spectators during games.

Basketball (especially in the United States) is another sport that largely restricts noise in and around sports arenas especially in this era of fake crowd noise due to the lack of spectator noise due to the Corona Virus. The Basketball National Collegiate Athletic Association Rules provide that;

*“ for Male Basketball: The playing of musical instruments, amplified music, canned music or artificial noise makers while the game is in progress shall be prohibited except during the time outs, intermissions, and instant replay review by an official. ”*<sup>19</sup>

*“Bowling: Noise caused by artificial noise makers, such as whistle or air horns, is not permitted in the competition, non competition or other designated spectator/crowd areas”*.<sup>20</sup>

The Corona Virus has activated the need for artificial noise making to create a pseudo-passionate effect of spectators who are not present in sports arenas

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<sup>17</sup>UEFA rules 2016.

<sup>18</sup> Article 6(2) n of the UEFA rules of 2016.

<sup>19</sup> NCAA playing rules (Artificial noise makers in sports for which the NCAA writes rules) updated

September,20191[https://ncaaorg.s3.amazonaws.com/championships/resources/rules/Rules\\_ArtificialNoisemakers.pdf](https://ncaaorg.s3.amazonaws.com/championships/resources/rules/Rules_ArtificialNoisemakers.pdf) last accessed on 30/7/21

<sup>20</sup> Ibid.

anymore because of the Virus and the need to maintain social distancing in public places which then motivated the National College Athletic Association to create guidelines for such noise making in respective sports arenas proving that the noise generated from sporting arenas can be injurious to human health.

## **7. False Ideology on Noise Pollution in Sports Arenas**

However, there seems to be a difference in ideology as to why the noise making instruments such as the Vuvuzela was banned because according to UEFA they believed that the Vuvuzela drowned the emotional connection between the spectators and the game and therefore the energy that is normally transferred by the fans to the players and from the players to the fans was heavily quashed by the Vuvuzela or the plastic horn.<sup>21</sup>

There is a difficulty in discovering how UEFA arrived at this conclusion since the conclusion came from them and the debate as to whether the Vuvuzela horn drowns the emotional connection to the game may be inaccurate since the horn was the soul of the world cup in South Africa so it may be argued that the Vuvuzela horn actually elevated the emotional connection between the spectators and the players at the world cup 2010.

The point of the foregoing argument is that the rationale for banning the Vuvuzela and other noise making instruments at stadiums should not be pegged or perceived on its effect on how it dissolves the emotional connection between players and spectators or the sports but on the noise it generates solely and its effects on spectators, workers at those events and the immediate community.

More so there seems to be a neglect on the noise generated by fans because of their passion during games which are very excessive because the UEFA regulations discriminates against the noise coming from instruments than the noise coming directly from the mouths of fans just because the noise coming from the mouths of fans is a testament to emotional connection to the game but

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<sup>21</sup>Brian Homewood, "Vuvuzelas banned from European soccer Competition" Reuters September 1 2010 <https://www.reuters.com/article/us-vuvuzela-soccer/vuvuzelas-banned-from-european-soccer-competition-idUSTRE6805FM20100901> last accessed on 26/5/2020.

this does not help with the damaging effect of noise generally on human health in and around sports arenas.

Apart from the noise generated from tools or horns, noise at stadiums can also be generated solely from the noise from the passion exhibited by fans during games for instance in the United States an experiment was done on the level of decibels of noises generated by fans in a live football match.

The samples were collected from 5 worker samples in large 5 college football stadiums and from 5 workers at a medium sized college football stadium for a total of 30 individual exposures for the workers. Also, samples of personal noise exposures from stadiums were also collected from 5 fans from the National Football League Stadium and two fans each from the college stadiums during the home football games.<sup>22</sup>

The result of the experiment was that the workers who were selected as guinea pigs from the experiment 39% of the workers selected had noise doses or exposures exceeded 85 decibels which will require a hearing conservation programme to fix and it was agreed that 95% of the workers at the stadiums were exposed to excessive noise.<sup>23</sup>

The findings also showed that the fans were also over exposed to a large dosage of noise putting the number of persons who are overdosed on excessive noise at 96% of fans selected according to World Health Organisation recommendations and also the degree of exposure of workers and fans were not significantly different at the respective stadiums and as a form of resolution of the hearing problem the researcher cited a hearing conservation programme for fans and other persons on the premises and also the provision of ear protection.<sup>24</sup>

The foregoing shows that persons that are usually in the sports arena because of their love for sports are at risk. More so, because employees of these sports

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<sup>22</sup>Derek J Engard ,Robert Gotsahall, Noise Exposure, Characterisation, and comparison of three Football stadiums *Journal of occupational and environmental hygiene* November 2010

[https://www.researchgate.net/publication/46221454\\_Noise\\_Exposure\\_Characterization\\_and\\_Comparison\\_of\\_Three\\_Football\\_Stadiums](https://www.researchgate.net/publication/46221454_Noise_Exposure_Characterization_and_Comparison_of_Three_Football_Stadiums)

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

arenas are mandated to be at such venues for their income, they are prone to hearing loss and also those that live really close to such stadiums are at risk of terrible damage to their hearing.

## **8. Sports Arenas and Residential Areas**

The first effect of the stadiums being located around residential areas is the noise but apart from the noise there are issues of over-crowding which also amplifies noise in communities close to the stadium and excessive crowd congestion may dissuade persons in the locality from their normal activities especially on the days there is a scheduled sports event.<sup>25</sup>

Furthermore, another fundamental bi-product of overcrowding in residential areas of the sports arenas is the excessive noise created by fans before the commencement of the sporting event and after the outcome of the event and of course it is expected that the noise generated by fans after the event is more than the noise generated by fans before the commencement of the sporting event.

The author of this research seeks to establish that there is an effect of noise pollution on residential persons around such stadiums and that the noise pollution is categorized into two:

- (i) the noise generated from the stadium when the sporting event is live and
- (ii) when the event is over and the fans are outside the stadium and the noise generated at that instance creates health risk for residents around such stadium.

Furthermore, according to the National Institute of Occupational Safety and Health stated that 85 decibels is the maximum amount of decibels that are safe for the human ear which is the noise level from the car horn or noise from traffic and if this is heard for eight hours can materially impair the capacity to hear which means that a stadium that averages 88 decibels will require about four

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<sup>25</sup>Dominique Wikins, "The Effect of stadiums on communities with a focus on housing" May 2016 Clark University Clark Digital commons [https://commons.clarku.edu/cgi/viewcontent.cgi?article=1016&context=idce\\_masters\\_papers](https://commons.clarku.edu/cgi/viewcontent.cgi?article=1016&context=idce_masters_papers) last accessed on 28/5/2020.

hours to reach hearing impairment by persons in the stadium or that live close to the stadium.<sup>26</sup>

In fact, it takes just one game to cause damage to the ear of a spectator of residents immediately surrounding the stadium talk less of regular attendance by spectators at stadiums, workers at stadiums and the danger to the hearing health of residents surrounding stadium because the noise effects become cumulative and may cause temporary hearing loss which may eventually lead to permanent hearing loss and also the risk of developing tinnitus i.e., when hearing abilities become really suppressed.<sup>27</sup>

## 9. Legal Remedies for Residents around Sports Arenas

The right to sue or access to courts is dependent on whether a wrong has been committed against a natural or legal person because for every wrong there must be a remedy (*ubi jus ibi remedium*) which means that for every legal wrong there must be a legal remedy provided by the courts.<sup>28</sup>

The reason why the courts uphold this maxim stated above for every citizen of a democratic society is to ensure that the Courts of law are performing their responsibility of protecting the rights of citizens and helping them achieving their relief rather than deny them.<sup>29</sup>

The relevant question at this juncture is to determine whether the regular use of stadiums which may potentially affect the hearing health of residents around sports arena is an actionable wrong capable of securing a relief from the courts against the owners of the stadium arenas.

The first rule as to the operation of the maxim as it affects residents around stadiums is that a damage or injury should have occurred before there is an attempt by residents around the stadium to sue to get some damages for the noise coming from stadiums. In other words, the residents around the stadium

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<sup>26</sup>Signia, "Are football stadiums a risk to my hearing health" 2018 <https://www.signia-hearing.com/blog/football-stadiums-risk-hearing-health/> last accessed on 21/3/21.

<sup>27</sup> Ibid.

<sup>28</sup> LEO FEIST V YOUNG (1943) 138 F.2d 972.

<sup>29</sup>SardarAmarjit Singh Kalra V Promod Gupta (2003) 3 SCC.

must prove that because of the noise emanating consistently for over weeks from in and around the stadiums perhaps has led to the temporary or permanent ear loss of those persons which then shows damage or injury.<sup>30</sup>

Furthermore, this means that for this principle to be utilised properly and secure a relief in court it cannot be used to stop a sporting event or prevent a sporting event from commencing or continuing because this sought of relief that will probably be covered by an injunctive relief. This relief can also be in form of a perpetual injunction against the stadium owners from further using the stadium for the hosting a sporting event or a temporary injunction preventing the continuous use of the stadium by the stadium owners pending a resolution on how to prevent the continuous damage to the health of residents or the potential of health risk to other residents with an expectation of a resolution of such issues by the courts.<sup>31</sup>

The foregoing argument raises the possible infringement of the right of spectators who are passionately involved and consistently participate in sports supporter ship may be prevented from manifesting their cultural rights which is connected to sports live viewership which in practical terms have reached a dimension of international culture. This right to cultural life is embedded in the International Covenant on Economic, Social and Cultural Rights which provides that;

“The state parties to the present covenant recognise the right of everyone

(a) To take part in cultural life.”<sup>32</sup>

Furthermore, the relief to be sought by residents around the stadium may experience some set back because this may affect the economic rights of investors to partake in work and right to own property which is also protected by international law.<sup>33</sup>The United Nations Universal Declaration of Human Rights provides that;

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<sup>30</sup> Ashby v white (1703) 92 ER 126.

<sup>31</sup> BELLO SALAMI V LIASU SALAMI & ALHAJI ADETORO LAWAL (2008) 6-7 SC PART 2 242.

<sup>32</sup> Article 15 of the International covenant on economic, social and cultural rights 1976.

<sup>33</sup>United Nations Universal Declaration on Human Rights 1948.

“Everyone shall have the right to property alone as well as in association with others”.<sup>34</sup> “No one shall be arbitrarily deprived of his property”.<sup>35</sup>

The foregoing shows that the restraint or an injunctive relief against stadium owners from utilising their facilities will be a legal struggle except the infringement on the health of the residents is canvassed which may turn the tide of justice for the residents around the stadium.

## **10. Potential Parties to Cases Between Stadium Owners and Residents around Sports Arenas**

There are arguments in favour and against as to the mode of commencing actions against these stadium owners and also whether the best option for resident around the stadium is individual or class actions (the enforcement of collective or group rights). The fact that the stadium is generating a lot of noise may affect every resident but may not affect the same residents the same way which may militate against the argument for a class action.

A class action can be defined as a legal action taken up by a set of claimants on behalf of themselves and all other persons having an identical interest in the alleged wrong. In other words, class actions are representative in nature but the representation must be mutual i.e., the persons been represented must have a consensus about the essence of the suit.

The Federal Rule of Civil Procedure 23 in the United States that a class action requires four conditions to qualify for court consideration which are that the (I) The class must be numerous that joinder of all parties is impracticable (ii) there must be question of law and fact related to the class (iii) The claims of representative parties must be typical of the claims of the class and (iv) the representatives parties will fairly protect the interests of the class.

The Courts generally believe that when parties are more than forty in number while some other courts prefer not to fix a certain number but rather focus on

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<sup>34</sup> Article 17 (1) of the United nations on the declaration on human rights 1948.

<sup>35</sup> Article 17(2) of the United nations on the declaration on human rights 1948.

the geographical dispersion or the nature of the action to determine a class action.<sup>36</sup>

Persons or residents that live around a particular stadium may start a class action representing residents when the foregoing factors are considered. This class action can cover all residents of a country or state with considerable exposure to the noise coming from stadiums with damaging effects on their health or possibilities of damaging effect on their health and the persons registered for the class action be awarded a large sum of payment as damages.

The courts can also hold for the breach of rights and the courts may be implored to give judgements mandating stadiums to providing tools or equipment to prevent further occurrence of such wrong for instance the Court may mandate the provision of a hearing device to act as noise blockers for such residents as possible remedies to such cases. But what if spectators have willingly attended the event as in almost every case. This counter-argument is also going to be analysed in this regard.

## 11. Volenti Non Fit Injuria Defense and the Natural Consequence Principle

“The volenti non fit injuria maxim is a clear legal principle that seeks to ensure that parties who had knowledge of a consequent risk of an action and still implicitly accepts the outcome of such risk.”<sup>37</sup>

Therefore, it may be argued that is it not possible based on the test of a reasonable man and the *volenti non fit injuria* maxim that the residents of a stadium should not reasonably expect that the noise from the stadium will not affect them since that is a natural consequence of their actions and they should be able to leave with the consequences of living in such environment.

There is also the legal principle in criminal law which is the principle of natural and probable consequences which basically means the natural or probable

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<sup>36</sup>Bona law PC, “What are the Requirements for Class Certification Under federal rule f civil procedure23”2020 [https://www.businessjustice.com/what-are-the-requirements-for-class-certification-under-federal.html#:~:text=Federal%20Rule%20of%20Civil%20Procedure%2C%20Rule%2023\(a\)%20provides,claims%20of%20the%20representative%20parties](https://www.businessjustice.com/what-are-the-requirements-for-class-certification-under-federal.html#:~:text=Federal%20Rule%20of%20Civil%20Procedure%2C%20Rule%2023(a)%20provides,claims%20of%20the%20representative%20parties) last accessed on 20/3/2021.

<sup>37</sup> DUBE V LABAR (1986 ) 1 SCR 649.

consequence of a natural act<sup>38</sup> and the import of this principle is that if a person can reasonably predict the outcome of his or her action then he or she cannot be excused from the consequence of such action.

Although this is a criminal law principle but it is not far from application in this circumstance i.e., the circumstance of living around a stadium with guaranteed vents of scheduled excessive noise making both in the stadium and outside the stadium and so persons who live around stadiums cannot exclude their participation in the wrong since it is a natural consequence of living close to a sports arena.

Furthermore, the argument that residents around a sports stadium or arena may be liable for contributory negligence because the principle of contributory negligence is of the view that if a party suffers some level of injury by another party but partly due to his own negligence contributed to the accident, injury or damage then the original defendant who actually caused majority of the wrong is excused from liability.<sup>39</sup>

The forgoing argument of contributory negligence means that perhaps a collection of residents or an individual resident wants to sue the stadium for the noise generated from inside or outside the stadium then the question of contributory negligence may be asked because if a rational person knows the detriment to the health large noises from a stadium or around a stadium can cause, then the conscious decision to still stay in such places may represent some form of contributory negligence of the part of the injured and may excuse the stadium owners from possible payment of damages or excused from liability totally.

Nevertheless, it may also be argued that the foregoing argument may not excuse the stadium owners if the residents were already there before the stadium was built because in that instance the government are supposed to take cognisance of the living or residential arrangements around that area before granting a license or permits for a stadium to be built around residential buildings and of

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<sup>38</sup> STATE V CARRASCO (1997) 49 P.3d 1140.

<sup>39</sup> Davies V MannEng (1842) Rep 588.

course there will not be any expectation for persons to live their residence just because stadiums were built in their areas.

Furthermore, a counter argument for contributory negligence is comparative negligence which is like the opposite of contributory negligence because comparative negligence emphasizes the ratio or percentages of liability and wrong rather than just totally excuse the liability of a defendant which is fair and sounds like justice.

In other words, comparative negligence basically means that each party will be allocated some of liability or damages which is to be determined by the percentages of negligence or cause of the accident relative to each party's contribution to such accident and which is also used to determine contribution to recoveries.

Comparative negligence was explained in *Hoffman v Jones*<sup>40</sup> where the Supreme Court in Florida in the United States in following the ideology of comparative negligence recognised the fact that in the field of the Law of Tort that the most equitable result that can be reached by a court of law is the equation of liability with fault.

Also, the courts are absolutely clear that when the comparative negligence is being utilised as principle in the Law of Tort, the misuse or carelessness of the claimant is also taken into account or even the assumption of risk falling short of international misconduct are all factors which the courts aggregate for the purposes of reducing or retaining the liability of the claimant but not erroneously preventing the defendant from paying damages or excused from any liability whatsoever.

The import of comparative liability to the scenario of residents around stadiums is that there may be a case of contributory negligence to the detriment of their health if they willingly and consciously decide to live around a stadium. However, that is not an excuse for the stadium owners to be excused from all liabilities

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<sup>40</sup> (1973) 280 SO.2d 431 @ 438.

which may include the damage to the ears of those residents just because they contributed in a way to the detriment of their hearing.

Furthermore, there may also be an argument as to the negligent contribution ratio of contribution to liability by the residents. The author will argue for a 50/50 contribution and the reason is because if a resident knowingly moves into an area where a stadium is located, he would have ordinarily expected that noise will basically be a part of his weekly routine and if after enduring such noise for a while and still decides to stay in such areas (excluding landlords) till the point of the loss of his or hearing then the liability is 50/50.

It is suggested that a class action should be used in these cases because naturally class actions attract a lot of attention from the public and the decisions are far reaching i.e., class actions decisions help affect persons that are affected by the same circumstance but individual actions and their decisions are only between the claimant and defendant with no extension to persons suffering in the same predicament.

## **12. Protection of Workers Rights at Stadiums**

The employer/employee relationship is a relationship usually determined by contract that state responsibilities of each party but the interesting thing about the employer and employee contract is that some terms are implied into the contract by law or regulation.

This, therefore, means that irrespective of the terms stated in a contract between an employer and employee there are laws that must be assumed to be part of a contract for the smooth running of the services to be performed by either party to a contract and an example of such law or regulation is the occupational safety and health regulations that are expected to be complied with in employer and employee relationships.

The occupational safety and health laws are prescription to employers to provide a workplace free from recognised hazards and comply with standard rules and

regulations in the safety regulation act and also to make sure employees have and use safe tools and equipment and properly maintain the equipment.<sup>41</sup>

In fact, in the United States the Occupational Safety Health Legislation mandates the employers to assure safe and healthful working conditions for men and women by authorising the enforcement of standards developed under the Act by assisting and encouraging the states in their efforts to assure safe and healthful working conditions.<sup>42</sup>

The Occupational Safety Health and Safety Act also mandates that the United States should invest in the discovery of latent diseases, establishing causal connections between diseases and work in environmental conditions and also conduct other research relating to health problems.<sup>43</sup>

The foregoing statute seems to transfer the burden on the discovery of possible ailments associated with certain occupations or diseases that are connected to certain work environments including sports stadiums or arenas. It therefore seems that stadium owners can evade the responsibility of discovery of ailment or diseases connected with noise emanating from sports stadiums.

Nevertheless, international law has demonstrated some level of protection from noise in the work place or environment. A clear example of such international protection is that afforded by the International Labour Organisation which is that each member state after due consultation between employers and employees may accept obligations as to protection from air pollution, noise and vibration.<sup>44</sup>

The law further provides that for the noise pollution element noise is examined from the point view of sounds that can result in hearing impairment or be harmful to employees in a workplace and that each national law may enact laws to ensure health standards in each work environment.<sup>45</sup>

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<sup>41</sup> Occupational Safety and health safety Act of the United States act 1970.

<sup>42</sup> Section 1 of the Occupational safety and health administration act 1970.

<sup>43</sup> Section 2 (6) of the Occupational safety and health administration act 1970.

<sup>44</sup> Article 2 of the Working environment (Air Pollution, Noise and Vibration) Convention 1977).

<sup>45</sup> Article 3& 4 of the working environment (air pollution, noise and vibration) convention 1977.

The law puts the burden on employers to be responsible for the compliance with health standards in the work place and seems not to permit the shared responsibility of ensuring compliance with health standards.<sup>46</sup>

Therefore, it is the responsibility of the stadium owners by virtue of International Law to ensure health standards as regards noise generated at stadiums and its health effects on persons that work in such environment.

The noise generated at stadiums is clearly an havoc to the workers at stadiums because of the number of decibels of noise that have capacity to impair the hearing of the workers as evidenced above which means that the noise generated from stadiums are hazards and it is the job of the employer which is the stadium owner to protect the workers from occupational hazards such as noise coming from the stadium by providing ear plugs for workers to prevent ear impairment and the refusal to provide such ear plugs may result in the breach of the law and the workers will be able to secure damages against stadium owners.

### **13. Occupational Safety and Duty of Care**

The worker in such environment should be able to sue for damages for any health hazard associated with ear impairment or any other health hazard associated with the noise generated from the sporting arena for the breach of duty of care of such employees which was reiterated in the South African case of *JOUBERT V BUSOR PROPIETORY LTD*<sup>47</sup> where the High Court of South Africa in Pretoria held that *“employers owed the employees a common law duty of care and to take reasonable measure to ensure the safety of persons in the work place which include the responsibility to comply with the occupational safety health act.”*

The foregoing health hazards empowers stadium workers to insist that stadium owners owe the workers a duty of care in terms of the noise generated from stadiums and any action or inaction in terms of the protection of the hearing of these workers entitles the workers to sue the stadium owners for negligence or the breach of duty of care.

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<sup>46</sup> Article 6 of the working environment (air pollution, noise and vibration) convention 1977.

<sup>47</sup> 2013/13116 (2016) ZAGPPHC 1024.

However, it could still be argued for the stadium owners that the principle of *volenti non fit injuria*, contributory negligence or comparative negligence as explained above under the residents' argument are possible defence against the inaction in protecting the stadium workers but it is quite obvious those workers have international and statutory authorities protecting their rights.

#### **14. Remedies for Sports Arena Spectators**

The spectators in stadiums may also have remedies against the stadium owners if the ear of a fan becomes impaired by excessive noise generated from the stadium but the same argument of the natural consequence of a person's action or the *volenti non fit injuria* is also valid here because every spectator should expect that there will be noise in the stadium but the author also puts forward the comparative and the contributory negligence argument as stated in the case of the residents and so the stadium owners should ensure that regulations are made to prevent hearing losses by providing ear plugs for each spectator and prevent the use of instruments such as horns, Vuvuzelas as encourage by UEFA.

#### **15. Research Findings**

Based upon the above analysis, following research findings are presented.

- (i) The noise from stadia has the capacity to impair the ear or sense of hearing of an average individual who is a spectator in a stadium, works in a stadium or lives just immediately outside the stadium complex.
- (ii) The noise generated from sports stadiums is not considered largely by local and international jurisdictions as a pollutant.
- (iii) There are sparsely any present municipal case laws or existing litigation on a class action on noise pollution emanating from sports stadia.
- (iv) Noise pollution is not treated as an occupational hazard for workers in sports stadiums requiring statutory protection.
- (v) The building of stadium licenses is largely approved in spite of existing residential buildings in such location.

## 16. Conclusion

Noise is generally acceptable hazard from stadiums by all persons from all walks of life but there are possibilities of mitigating elements to reduce the effect of the hazard on citizens who are ordinary passers-by and even the spectator because the inability to address this presently may affect the attendance in stadiums in the nearest future because of the danger of the noise to people's health.

Municipal laws and case laws are expected to provide legal and equal remedies for sports arena spectators, sport stadia workers and residents of residential areas during sporting events predicated on established principles of occupational safety and duty of care irrespective of the tortuous principle of the *violent non fit injuria* to cure the possible mischief of deafening or endangering the hearing capacities of persons identified in this paper.

This paper also concludes that;

- 1.The protection from noise for workers at sports arenas must be treated as an occupational hazard requiring the protection and safety regulation and items from the employers towards their employees.
- 2.The government should not grant licenses for the building of stadiums where there are residential buildings.
- 3.The residents of communities around sports arena may be relocated by government to new areas from compensation gained at class actions against the stadium owners.
- 4.Sports regulatory bodies should adopt mechanisms to prevent noise emanating from stadiums from affecting spectators such as the use of ear plugs etc.

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