THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO 534 OF 2012

MAKUBUYA E WILLIAM T/A POLLA PLAST}.....PLAINTIFF

VS

UMEME (U) LIMITED}.....RESPONDENT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff's action against the Defendant is for declaration that the Plaintiff is not liable to pay power bills of Uganda shillings 60,482,777/=. Secondly a declaration that it is not liable to pay electricity bills of Uganda shillings 106,316,886/= assessed on the basis of two faulty meters. Thirdly the Plaintiff seeks a declaration that it was unlawfully charged for causing energy loss and is not liable to pay a fraud charge of Uganda shillings 51,475,373.68. The Plaintiff seeks nullification of an undertaking it made on the 9th of May 2012. Furthermore an order directing the Defendant compensate the Plaintiff for economic loss, loss of business and loss of the company assets occasioned by the acts/or omissions of the Defendant; general damages; interest and costs of the suit.

The Defendant denies the claims and counterclaimed against the Plaintiff for recovery of Uganda shillings 155,157,226.83. The Defendant/counterclaimant claims against the Plaintiff/Defendant to the counterclaim as its customer or client. The counterclaimant also claims interest on the claimed sum at commercial rate from the date of accrual till payment in full; general damages and costs of the suit and the counterclaim. The Plaintiff/Defendant to the counterclaim denied the counterclaim. The Plaintiff is represented by Counsel Joseph Anguria of Messieurs Anguria, AOGON and Company Advocates while the Defendant is represented by Counsel Gimanga Sam of Messieurs Shonubi, Musoke and Company Advocates. At the close of the Plaintiffs case and Defendants defence, the court was addressed in

written submissions by both Counsels. Prior to the closure of the case/defence for submissions the parties agreed to and referred part of the dispute as relates to electricity bills and payments thereof to a joint audit for reconciliation of accounts. The audit covered the period 1 March 2008 to date as well as 1 March 2008 to July 2013.

In the joint scheduling memorandum signed on behalf of the parties by their Counsels there are hardly any agreed facts. It is agreed that the Plaintiff is the registered business proprietor of Polla Plast. Secondly the Plaintiff is a client of the Defendant. Thirdly the Defendant disconnected the Plaintiff's power supply and demanded full payment before reconnection.

The Plaintiff's brief facts are that between March and November 2008, the Plaintiff bought plastic manufacturing machines from BMK industries. The Plaintiff subsequently commenced business on the premises of his landlord Messrs BMK Industries and they agreed then that the Plaintiff pays his electricity bills using the account of BMK. The Plaintiff later on caused change of the account names into the names of his business Polla Plast and was surprised to be given an outstanding bill by the Defendant amounting to Uganda shillings 155,183,658/=. The Plaintiff contests the amount in this suit. As it is out of not having electricity for long periods the Plaintiff suffered economic loss and his entire business collapsed when the landlord confiscated and subsequently attached and sold the Plaintiff's manufacturing machines/equipment to recover rent.

On the other hand the Defendant asserts that the Plaintiff at all material times was a customer of the Defendant and counterclaimant company. The Plaintiff consumed electricity supplied by the Defendant and the accumulated a bill of Uganda shillings 155,157,226.83 which the Plaintiff refused to settle and which remains outstanding. The Plaintiff was disconnected from using electricity for failure to clear his bill but on several occasions he would reconnect himself to power which prompted the Defendant/counterclaimant to report the matter to the police. The Plaintiff has to date without any lawful excuse failed to clear his outstanding electricity bills.

Agreed issues:

1. Whether the Plaintiff is liable to pay the outstanding electricity Bill of Uganda shillings 155,157,226.83 to the Defendant.
2. Whether the Defendant illegally and unlawfully transferred the Bill of Uganda shillings 60,482,777/= to the Plaintiff?
3. Whether the Defendant irregularly and unlawfully fined the Plaintiff in respect to the imposed fraud charge of Uganda shillings 51, 575,373/=?
4. Whether the Defendant irregularly and unlawfully billed the Plaintiff in respect of faulty meter readings?
5. Whether the Defendant is liable for the loss of the Plaintiff's machines and business?
6. What are the appropriate remedies available to the parties?

The facts of this case are sufficiently contained in the written submissions of Counsel and will be considered in the resolution of the issues.

Whether the Plaintiff is liable to pay the outstanding electricity bill of Uganda shillings 155,157,226.83?

The Plaintiff's Counsel submitted that the Defendant in the counterclaim alleges that the Plaintiff is indebted to it to the tune of Uganda shillings 155,157,226.83 which claim forms the basis for which the Defendant handled the Plaintiff irregularly and unlawfully to the extent of the Plaintiff losing his entire business/factory. When the Plaintiff was asked if he was indebted to the Defendant, he denied owing such a sum as claimed in the counterclaim. The Bill arose as a result of default that the Defendant is guilty of on the electricity account of the Plaintiff. These include billing the Plaintiff when the factory was not in operation, illegally transferring the Bill of hotel Africana Ltd to the Plaintiff, fraud billing/charge, billing the Plaintiff using faulty meters which the Defendant acknowledged were faulty according to exhibit PE 20.

Consequently the Plaintiff strongly denies indebtedness to the Defendant and as claimed in the Defendant's counterclaim. The Plaintiff on numerous occasions challenged the Defendant to justify the bill and give him audience to conduct a forensic audit and resolve the issue of exaggerated figures but the Defendant took no action.

After the filing of this suit the parties joint report of that first of October 2013 and received by the court on 5 November 2014 and at page 3 thereof, has the Defendant in agreement to the fact that between the period November 2008 to July 2013 the Plaintiff paid a total of Uganda shillings 359,720,585/=. The Plaintiff was a good client and what is in dispute (the amount in dispute) according to the audit are the fraud charge, bill transfer and faulty meters.

The Plaintiff's Counsel submitted that in considering the counterclaim, the claim of 155,157,226.83 is in law a liquidated demand and could only be claimed as special damages which ought to have been particularised so as to ascertain how the aggregate claim comes about. He submitted that special damages must be specifically pleaded and strictly proved according to the case of Kampala City Council versus Nakaye (1972) EA 446 and Kyambadde versus Mpigi District Administration (1993) HCB 44. He contended that the Defendant's counterclaim is not particularised and was never proved in court to warrant the award of the sums claimed. Secondly in their sworn testimony of DW1 (Joyce Nanziri) and DW 2 (Agnes Nalwanga) the Defendants witnesses gave to defend claims that the Plaintiff allegedly owes the Defendant. In paragraph 13 of the witness statement of DW1 is claimed that the Defendant demands from the Plaintiff Uganda shillings 155,000,157,226.83 yet in respect of the same claim DW two testified that the Plaintiff is owed Uganda shillings 172,359,297 in paragraph 14 of her witness statement. Counsel submitted that the only logical conclusion from the glaring disparity is that the Defendant/counterclaimant does not have any legitimate claim against the Plaintiff as claimed in the counterclaim. Secondly it demonstrates that the Defendant does not carry out its duties in a professional manner.

Finally the Plaintiff's Counsel proposed to tackle issues 2, 3 and 4 in order to finally resolve the 1st issue.

In reply the Defendants Counsel submitted that the Plaintiff trading as Polla Plast was a customer of the Defendant Company. The Plaintiff took over the premises that they occupied from yet other clients of the Defendant, Hotel Africana and BMK Industries that have the same ownership. The Plaintiff occupied the premises for an extended period paying the bills jointly with the former occupants, Hotel Africana and BMK Industries before applying to take over the Electricity Account with the

Defendant Company in its own name, during this period, the Plaintiff and the former occupants of the premises, Hotel Africana and BMK Industries paid their electricity bills jointly through a system that the Defendant was not aware about.

At the time of transfer of the Electricity Account from Hotel Africana and BMK Industries to the Plaintiff, all parties involved in the transfer, wrote to the Defendant asking that the Account be transferred and the Plaintiff owned up to the outstanding bill and pledged to clear the same. The Plaintiff later went further and entered into a written undertaking to clear all his outstanding electricity bills with the Defendant.

The Defendant now seeks to enforce the payment of the outstanding electricity bills and the Plaintiff seeks to renege from its obligation to pay for the said bills hence this suit.

As far as issue Number 1 is concerned, the Defendants Counsel submitted in reply that it is not disputed that the Plaintiff was the Defendant's customer and that the Defendant served the Plaintiff with a bill tendered in Court as Exhibit D1, that is the amount of the bill that the Defendant claims from the Plaintiff and the same after a forensic audit by the parties leading to the Joint Audit Report by the two parties tendered in Court on 5th November 2014 was in agreement of both parties revised upwards to Uganda shillings 172,356,467.

The said bill constituted power consumed by the Plaintiff directly but not paid for, a transferred bill of Uganda shillings 60, 482,777/= that the Plaintiff asked the Defendant to transfer to its account, the bill also constituted a fraud charge of Uganda shillings 51,575,373/=

The Plaintiff's dispute on the above electricity bill rotates around three issues, the transferred bill, the fraud charge imposed and a third issue of billing arising from faulty meters, in essence therefore though the Plaintiff by admission consumed power supplied by the Defendant, he does not want to pay for it as he disputes his whole bill. This constitutes dishonesty on the part of the Plaintiff in the conduct of his business.

The said contentions are the subject of issues 2, 3 and 4 as raised at the scheduling whose resolution is necessary to determine this 1st issue whether the Plaintiff is

liable to pay the aggregated bill of Uganda shillings 155,157,226.83 and that was jointly revised to Uganda shillings 172,356,467 in the Joint Audit Report between the parties of the Plaintiff's account that is now part of the Court record.

The Defendant's Counsel proceeded to resolve Issues 2, 3 and 4 before returning to a conclusion on this Issue.

In rejoinder the Plaintiff's Counsel reiterated the brief facts in the earlier submissions. However, for emphasis added that the Plaintiff lawfully took over the premises that were only occupied by BMK Industries and not Hotel Africana. The Plaintiff shared bills jointly with BMK Industries only and not with Hotel Africana.

The Plaintiff got powers from BMK Industries to transfer its account to Polla Plast which was lawfully done. BMK Industries account was changed to Polla Plast without any complaint and the historical statement of account for both BMK Industries and Polla Plast as shown on the Joint Audit Report for Makubuya Enock and UMEME (U) Ltd. At page 37 of the Joint report shows the customer information for BMK Industries and the meter No. E201278 and it ended on 20th October, 2008 and thereafter Polla Plast started using the same meter Number for about two years. At page 38 of the Joint report clearly shows the customer information for Polla Plast including the opening payment deposit for security deposit in 2009.

Page 51 of the Joint Audit Report for both Companies, shows BMK Industries bill on account NO.1 00192145 dated 7th October, 2008; meter No. E201278 and on page 52 of the said report shows Polla Plast bill on account No. 200664023 dated 12th March, 2009; meter No. E201278.

The above two bills for BMK Industries and Polla Plast verily shows that one bill arises from the other because the meter number reads the same and Polla Plast started from where BMK Industries had stopped and there was no relationship and/or any nexus with Hotel Africana Ltd as per the documents/Exhibits.

The Plaintiff never wrote a letter of transferring outstanding bills of another party to Polla Plast instead it is Hotel Africana Ltd that allegedly wrote the said letter to the Defendant as per the Plaintiff's Exhibit P5. The Defendant holds a photocopy of the letters which he claims to have been written by Polla Plast which is not true as

the Plaintiff does not know the whereabouts of the purported letter which was tendered in Court for identification as Exhibit D1D1.

As far as the undertaking of the Plaintiff in exhibit D6 is concerned, the Plaintiff entered into the said undertaking unwillingly due to the pressure he was put to by the Defendant whereupon its agents had attempted to disconnect power totally if the Plaintiff did not comply and yet he had commitments with clients to make deliveries as for fear of obvious legal proceedings on the same grounds had to enter into the said undertaking under duress.

Issue 1:

Whether the Plaintiff is liable to pay the outstanding electricity Bill of Uganda shillings 155,157,226.83?

It is true that the Plaintiff is the customer to the Defendant however, the Bill that is exhibit DX 1 on page 104 emanates from faulty meters which has been a subject of several complaints by the Plaintiff to the Defendant which the latter refused, ignored and/or neglected to respond to as envisaged by the Plaintiffs Exhibit 19 on page 35 of the joint scheduling memorandum. It is worth noting that the defence witnesses DW1 and DW2 in the testimony falsely alleged to be well conversant with issues pertaining to the instant case and presented two distinct claims from the Defendant in respect of the same claim. DW1 testified about a Bill worth Uganda shillings 155,157,226.83 whereas DW2 testified about a Bill worth Uganda shillings 172,359,297/= and the Defendant miserably failed to reconcile these two positions confirming the earlier submissions that the client and the counterclaim should be dismissed. The counterclaim is bad in law and does not conform to the law governing pleadings.

It is not true that the Plaintiff consumed power talked about and it is clear that the bill belongs to Hotel Africana Ltd and the directive of transferring the bill came from the said hotel Africana Ltd to the Defendant. They exchanged letters with the Defendant without the Plaintiff's knowledge as evidenced by the Plaintiff exhibit P5 which letter was not copied to the Plaintiff. The contents of the said letter were not in regard to the Plaintiff’s account but rather to the company which was Polla Plast however by that time, the Plaintiff was not a limited liability company. Perhaps the

Defendant was mistaken in transferring the Bill to Makubuya trading as Polla Plast instead of transferring it to Polla Plast Ltd as consistently quoted by Hotel Africana.

The Parties' Joint Audit report of 31st October, 2014 on page 3 shows that the Defendant is agreeable to the fact that between the months of November, 2008 to July 2013, the Plaintiff paid a total of Uganda shillings 359,720,585. Therefore the amount claimed by the Defendant is baseless as the first position amounts to an admission. By the Plaintiff paying such a huge sum as a client of the Defendant, it shows that indeed he was a good customer. **Section 16 of the Evidence Act, Cap. 6** defines admission as "a *statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances, hereinafter mentioned.*

Section 17 of the Evidence Act, Cap 6 provides that *"statements made by a party to the proceeding or by an agent of any such party, whom the Court regards, in the circumstances of the case, as expressly or impliedly authorized by him or her to make them, are admissions.*

The case of **KAMPALA CITY COUNCIL (KCC) Vs. NAKAYE (1972) E.A page 446 and KYAMBADDE vs. MPIGI DISTRICT ADMINISTRATION (1993) HCB 44** was not disputed by the Defendant and the Court should consider them as applicable.

The Defendant's claim itself is ambiguous and is premised on a transferred bill from Hotel Africana, Fraud Bill and faulty electricity meters and Counsel prayed that issue number 1 should be resolved in favour of the Plaintiff.

Issue 2: Whether the Defendant illegally and unlawfully transferred the Bill of Uganda shillings 60,482,777/=?

The Plaintiff's Counsel submitted that Regulation 24 (1) of the Electricity (Quality of Service Code) Regulations, 2003 provides that where there is a dispute between the customer and licensee regarding the Bill, the licensee shall make and report the results in writing to the consumer. Clause 3 mandates the consumer not pay the disputed portion of the Bill which exceeds the amount of the consumer's average usage for the billing period at current rates until the resolution of the dispute. In the case in issue the Plaintiff contested the transfer bill worth Uganda shillings 60,482,777/= which he asserts that he could not have consumed. He testified that

he was a tenant of BMK industries on whose names the account with the Defendant was registered and consequently they would share electricity bills with the landlord on agreeing how much each person would pay. With the approval of BMK industries, the Plaintiff was able to acquire an account with the Defendant and registered it under the account names Polla Plast. The relationship between BMK Industries and Polla Plast is in the Sales Agreements exhibit P2 and P3.

The second relationship between BMK Industries Umeme Account No. 100192145 and Polla Plast is the fact that Polla Plast took over the BMK Industries Meter No. E 201278 according to Exhibit P.4 on page 21 of the Joint Scheduling Memorandum and page 52 of the Joint audited Report Meter No. E201278. The Plaintiff took over on Account No. 200664023 of Polla Plast. The relationship between Hotel Africana Limited and Polla Plast was that in the period 2008 to 2010 Hotel Africana Limited was using Polla Plast's metered energy which they acknowledged and accepted to pay for as evidenced by exhibit P8 and P13.

It is therefore impossible for the Defendant to assume that the transferred bill of Uganda shillings 60,482,777 is legitimate considering that it was Hotel African Paying the Plaintiff for the electricity consumed and not the other way round. At the trial the Plaintiff demonstrated that BMK Industries is a business and Hotel Africana Limited is an independent Entity/Company according to exhibit P38 which is a certificate of registration of BMK Industries.

Hotel African Limited wrote to the Defendant to transfer the said bill to the Polla Plast account according to Exhibit P5 yet the Plaintiff at all material times shared a meter with BMK Industries before transferring it into its names. The Plaintiff was never notified of this correspondence and arrangement between the Defendant and Hotel Africans Limited but the transferred bill was reflected on his monthly bill.

The Plaintiff contested the transfer bill as it is indicated in Ex P25 and the Defendant failed on their duty in Regulation 24 to investigate and report the results accordingly. Instead the Defendant decided to connive with Hotel Africana Limited to transfer the said bill unlawfully. In an attempt to legitimize the illegal transfer of 60,482,777 the Defendant attempted to smuggle into the record of Court a letter allegedly written by the Plaintiff **(D.1.D. 1)** dated 20/10/08 by hand and clearly not written and signed by the Plaintiff.

The alleged letter was not received by the Defendant as is normally the case and the Defendant's agents failed to produce to Court the original letter that was allegedly served on them. Counsel prayed that the court disregards **DID 1** as being of no evidential value.

The Plaintiff relied on the duty of care in **Donoghue vs. Stevenson (1932) *AC* 562**, and **Caparo Industries Pic v Dickman *(1990)2 AC* 605** for the submission that there existed a fiduciary relationship between the Plaintiff and the Defendant under a Customer-Supplier relationship respectively. From such a relationship, there are duties and rights accorded to both parties. The Defendant therefore owed a duty to the Plaintiff to investigate and report the transfer bill when the Plaintiff contested it and thus the Defendant should have foreseen that by negligently failing to carry out the required procedure it would occasion loss of business to the Plaintiff. Even though the regulations governing the Defendant's operations do not permit transfer of bills between clients, the only way that this could have been legitimately done without a fuss was to have a *"tripartite"* signed agreement between Hotel Africana Limited, the Plaintiff and the Defendant. In the absence of such an agreement, the Plaintiff cannot be held responsible to pay a bill consumed by another Client of the Defendant. The Defendant's actions and or inactions consequently led to the loss the Plaintiff's factory and subsequently loss of business to the Plaintiff.

In reply the Defendant's Counsel submitted that it is an agreed fact that the Plaintiff in opening his own account for his business took over the premises from BMK Industries and Hotel Africana and that the said entities shared electricity bills with the Plaintiff. The same was admitted in evidence. First and foremost, transfer of a bill from one customer to the other is a lawful procedure if done with the consent of the concerned customer as DW1 AND DW2 testified.

The Electricity (Primary Grid Code) Regulations 2003 under the unforeseen circumstances provided for under clause 2.1.3 is to the effect that in circumstances like the instant, regard shall in any event be had to what is reasonable in all circumstances towards maintaining the reliability and safety of the system. The Plaintiff clearly gave his consent in the transfer of the bill of Uganda shillings 60,482,777. From the Hotel Africana Account or his own account. The consent was

in writing and through two letters written by the Plaintiff, one to Hotel Africana and the other to the Defendant. The letter to the Defendant asking the bill be transferred to the Plaintiff's account was admitted by the Plaintiff and tendered in evidence as **DX7.**

The Letter to Hotel Africana from the Plaintiff accepting to pay the transferred bill is what is disputed and was marked DID1. The Court directed the parties to address Court on whether DID 1 should be tendered in evidence.

The background to this document is that the same was written to Hotel Africana in light of the fact that it is mandatory requirement of the Defendant for both parties to consent before a bill is transferred.

The Plaintiff therefore wrote to Hotel Africana as evidenced by DID 1, wrote to the Defendant as evidenced by DX7 and Hotel Africana in turn wrote to the Defendant accepting the transfer and forwarding the consent from the Plaintiff evidenced by PX5, the Plaintiffs own exhibit which also under the first line of the third paragraph referred to DID1 that the Plaintiff now conveniently denies.

An objection was also raised by the Plaintiff that the document could not be his as the Box number with figures 341 … has never been his and he does not know about and had never had a Box number of that nature however this is a blatant lie as PX2, the Plaintiffs own document, a sale Agreement between BMK Industries and the Plaintiff mentions the Plaintiffs Box number as 34157 the exact figures in the Box number in DID 1 but for the fading at the corner of the paper.

The Plaintiff went ahead during cross examination to conveniently attempt to deny the signature and the font used in the letter as not his own, however evidence that the said letter is his is overwhelming and the other letters from the Plaintiff corroborating the contents of DID 1 like DX7 and PX7 from Hotel Africana that he relies on prove on a balance of probabilities that DID 1 is the Plaintiffs letter and we invite Court to accept the same in evidence.

The law on tendering of documentary evidence is to be found in the Evidence Act Sections 60-72.

Section 60 states that documents may be proved by primary or secondary evidence, Section 62 and under sub sections (b) and (c), secondary evidence means and includes, copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy and copies compared with those copies and copies made from or compared with the original.

Further Section 64 (1) (a) gives the instances when secondary evidence may be admitted as when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it.

DID 1 being a copy derived electronically from a copy of the original and the original being in the possession of either the Plaintiff against whom it is sought to be proved or Hotel Africana that is not party to /subject of these proceedings, should be tendered in evidence.

The Plaintiff during cross examination while denying any connection to DID 1, fully owned up to DX7 as his document and the two documents are to the same effect that the Plaintiff accepted responsibility for the transferred bill of Uganda shillings 60,482,777 and pledged to pay for the same.

In light of the evidence as adduced in the trial and explained above that the Plaintiff shared meters and Electricity Accounts with BMK Industries and Hotel Africana and further evidence that through two letters to Hotel Africana and the Defendant, the Plaintiff asked for the transfer of a bill of Uganda shillings 60,482,777 for power he consumed. We pray that Court finds that the said bill was lawfully and legally transferred as the same has been proved on a balance of probabilities.

In rejoinder on issue number 2 the Plaintiff's Counsel submitted that it is not true that BMK Industries and Hotel Africana Ltd are same entities; they are different entities and have never shared electricity bills.

The Plaintiff never gave consent for the transfer of the said bill as alleged by the Defendant and there was no reason whatsoever for the Plaintiff to write to the third party in respect of the said transfer where the Plaintiff was not concerned and opposed to the said transfer. For avoidance of doubt, the Plaintiff never wrote or

exchanged any communication with Hotel Africana Ltd regarding the transfer of any bill and there was no legal basis/justification for so doing. More so, the Defendant has severally failed to adduce evidence before this Honourable Court as regards the relationship between the Plaintiff and Hotel Africana Ltd in relation to this suit. **Section 101 (1) of the Evidence Act, Cap. 6** provides that *"whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist."* The Defendant has failed to discharge that legal burden.

Clause 2.1.3 of the Electricity (Primary Grid Code) Regulations, 2003 as relied upon by the Defendant is correct per the wording however, it is not applicable to this case as the circumstances in this case were foreseeable and not unforeseeable as misinterpreted by the Defendant. In that regard, the Court should be pleased to disregard the said authority as being inapplicable to the instant case.

On the issue of the disputed DID1 Counsel opposed its exhibition in evidence. He submitted that the said document was not authored by the Plaintiff. The said document shows the Box No. 341, the date written by hand, there is no Polla Plast Stamp and the signature is not that of the Plaintiff. The Purchasing Agreement marked as Exhibit 2 and 3 bears the Box No. 34157 which is the right address as opposed to the one that appears on document D1D1 which no other conclusion but that of forgery.

The Defendant totally failed to tender the original copy of the said document D1D1 before this Honourable Court despite this Court's order to that effect implying that the Defendant has no original of the photocopy without reasonable excuse in that regard. The Defendant unashamedly wants this Honourable Court to admit the document as an Exhibit with unclean hands and it is barred by the doctrines of equity: "*He who comes to equity must come with clean hands."* The Defendant failed to tender in Court the original of DID1 as directed by Court and now it wants Court to admit a photocopy. Counsel prayed that the Defendant's prayer to tender is denied.

Furthermore he submitted that the Defendant is misinterpreting sections of the Evidence Act. Section 60 of the Evidence Act provides that: *the contents of documents may be proved by primary or by secondary evidence.* Secondly section

61 provides that: *"primary evidence means the document itself produced for the inspection* of *the Court."* The Defendant failed to adduce the certified copy of the original and further failed to adduce the original document D1D1 for comparison with the said photocopy. Section 63 further provides that *"documents must be proved by primary evidence except in cases hereafter mentioned."* In that regard, the Defendant relied on section 64 (1) (a) thereof to its rescue however, the said provision was misinterpreted in the sense that even the Defendant is broadly admitting its ignorance of the whereabouts of the said original copy, it is not sure whether the original emanates from the Plaintiff which is not true or Hotel Africana Ltd which is not a party to the suit, moreover, the provision requires issuance of notice as provided for under **Section 65 of the Evidence Act, Cap. 6** which is a mandatory requirement. There is no such evidence that the Defendant issued such notice. Section 66 provides that *"if* a *document is alleged to be signed or to have been written wholly or in part by any person*, *the signature or the handwriting* of so *much* of *the document* as *is alleged to be in that person's handwriting must be proved to be in his or her handwriting."* The Plaintiff denies the signature as being his and there is no evidence whatsoever adduced by the Defendant to the contrary.

As far as Burden of proof is concerned, section 101 (1) provides that *"whoever desires any Court to give judgment* as *to any legal right or liability dependent on the existence* of *facts which he or she asserts must prove that those facts exist."* Secondly section 101 (2) provides that *"when* a *person is bound to prove the existence* of *any fact*, *it is said that the burden* of *proof lies on that person."* Thirdly section 103 of the Act provides that *"the burden* of *proof* as *to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof* of *that fact shall lie on any particular person."* Finally section 106 of the Evidence Act provides that *"in civil proceedings*, *when any fact is especially within the knowledge* of *any person*, *the burden* of *proving that fact is upon that person."* Counsel relied on the case of **Joseph Constantine Steamship Line Limited vs. Imperial Smelting Corporation Limited (1942) *AC.* 154,** for the principle that the burden of proof whether general or particular lies normally on a party who affirms and not on the party who denies.

Guided by the aforementioned authorities the Plaintiff's Counsel submitted that the document D1D1 does not pass the legal test of admissibility as the Defendant has

failed to discharge its burden of proof and instead embarked on raising emotional sympathy for this Honourable Court to grant its prayer which does not form part of the legal principle which Court is obliged to follow. Secondly there was no objection to the reliance by the Plaintiff on the case of **Donoghue vs. Stevenson (1932) AC. 562, Caparo Industries *Pic vs*. Dickman (1990)2 AC. 605** and the Court ought to consider them as applicable to the instant case.

As far as Exhibit D7- is concerned the request of the Plaintiff was out rightly rejected as at that point the Plaintiff was willing to do whatever he could to save his business/ factory as he was under immense pressure.

Issue 3: whether the Defendant irregularly and unlawfully fined the Plaintiff in respect to the imposed fraud charge of Uganda Shillings 51,575,373.68

The Plaintiff's Counsel submitted that the Defendant's allegation of fraud emanates from P.E. 7 on page 24 with the Heading **"Energy Loss on Account Number 200664023"** for the period of just one day, that is Sunday April 11, 2010 to Monday 12th April 2010 totalling to a fraud bill of Uganda shillings 51,575,373. The Defendant in Paragraph 3(b) of the counterclaim alleges that *"..the Plaintiffs on several occasions unlawfully reconnected his electricity without the Consent* of *the Defendant and without paying his outstanding bill."* The Particulars of the alleged self reconnection which in civil law amounts to acts of fraud are not specifically pleaded and have not been strictly proved as required by law (See **Kampala Bottlers Limited versus Damanico (U) Limited SCCA No. 22 of 1992 and Fredrick Zaabwe Vs Orient Bank & 5 Others SCCA No.4 of 2006)**. He submitted that what was presented to court by the Defendant are mere allegations devoid of merit.

The Plaintiff (PW1) in his testimony stated that for him to practically self reconnect his factory, he would have to switch off/shut down power from the Lugogo Power Substation which capacity he did not have. Besides, P.E. 36 on page 102 -103 are photos indicating that the factory was almost 200 meters away from the transformer and meter which was on the Road side and the Meter box was normally locked by Umeme Officials. The Defendant did not follow the required procedures in levying the hefty fraud charges. **See *Regulations* 26 *and* 27 of *the Electricity (Quality* of *Service Code) Regulations, 2003***, provide that the meter

in question should have been first tested by professionals and be found to have been tampered with before levying of the fraud bill. The Defendant failed to bring any Evidence that the meter was indeed bypassed as alleged. The claim by the Defendant demanding that the Plaintiff pays Uganda shillings ***51,575,373*** should be rejected by the Honourable Court for being baseless.

In reply the Defendants Counsel submitted that the defence witnesses 1 and 2 testified that the Plaintiff on several occasions was found upon disconnection by the Defendant to have reconnected to power. They further testified that pursuant to this misdeed by the Plaintiff, which is also a criminal offence, a complaint was made to the Police under CRB 1744/2012 and the Plaintiff to date is still being prosecuted, charged with offences related to power theft.

Regulation 15.5.1 of the Electricity (Primary Grid code) Regulations 2005 permits the Plaintiff to disconnect power at a consumer's premise immediately where power is accessed in a manner other than as provided by the above regulations. Where there is a dispute on any action of the Defendant, the Plaintiff under Regulation 21 can seek redress from the Defendant, the Electricity Regulatory authority or Courts of law. Defence Exhibit 4, a document not disputed by the Plaintiff clearly indicates that the Plaintiff was disconnected from power for two reasons, an unpaid outstanding bill and self reconnection as he had already been disconnected though as his habit was as per the Defence witnesses, the Plaintiff fraudulently, illegally and unlawfully reconnected himself. This as the Defence witnesses testified was something the Plaintiff kept doing from 2010 which prompted the Defendant in 2012 as per DX4 to recover the electricity pole and conductors at his premise to prevent further reconnection.

The fraud charge of Uganda shillings 51,575,373. arose from this unlawful reconnection and the same was for consumption for three months, that is March, April and May 2010. The Plaintiff raised a complaint about this fraud charge to the Defendant and the same was clarified by letter duly received and acknowledged by the Plaintiff and tendered in Court as DX2. Line 4 under paragraph 4 explains the fraud charge and how it came about. This document was undisputed. The fraud charge of Uganda shillings 51,575,373/= was therefore lawful imposed as per the law governing the relationship between the Plaintiff and Defendant.

In rejoinder to on issue 3 the Plaintiff's Counsel submitted that the testimony of DW1 and DW2 as regards the allegation of the Plaintiff reconnecting himself is a bundle of lies as the said two witnesses were not present at Banda Office by that time as they had stated in their statements.

Further, the said two witnesses/ Defendant failed to prove whether there was self-reconnection or not. The Plaintiff (PW1) testified that for him to self reconnect his factory, he would have to switch off/shut down power from the Lugogo Power Substation where he was incapacitated to do. As regards a criminal offence under CRB/744/2012, Article 28 (3) (a) of the Constitution of the Republic of Uganda, 1995 provides for presumption of innocence. The Plaintiff to date is a free man and has never been convicted of any wrong doing as alluded to by the Defendant's Counsel.

In reply to paragraph 5 of the Defendant's submissions, Defence Exhibit 4 was given to the Plaintiff by the Defendant and power was disconnected up to date however, the said meter continued to read from 141,992,954 to 172 million Uganda shillings and was further reading until it was removed in July, 2013 and yet the Poles had been removed earlier on 29th October, 2012. The power on the Plaintiff's premises was completely cut off, the machines were sold in auction but the meter remained behind on the transformer with power in it and in the system wherein the Defendant's billing department proceeded erroneously with billing the Plaintiff without any justification whatsoever.

In reply to paragraph 6 of the Defendant's submissions, the fraud charge of Uganda shillings 51,575,373 was assessed once as per Plaintiff Exhibit 7 on page 24 and the Defendant Exhibit 114 which shows that the consumption was for one day. The allegation by the Defendant that the consumption was from March to May, 2010 is a blatant lie as there are no other documents that talks of the said months of March to May as alleged by the Defendant. The Defendant Exhibit 5 on page 108 shows that the fraud charge was put on the Plaintiff's statement of account! Customer information on 1st of April 2010, how then can the fraud charge be levied by the Defendant in May, 2010?

Issue 4: Whether the Defendant irregularly billed the Plaintiff in respect of faulty meters?

Regulation 7.1.1 (b) of the Electricity (Primary Grid Code) Regulations, 2003, mandates the Licensee to provide, install and maintain standard metering and necessary ancillary equipment at a suitable location to be provided by the consumer.

The Plaintiff's Counsel submitted that the Defendant on two separate occasions installed 2 faulty meters Numbers UM 30044 and U3280 and on each occasion the Plaintiff was billed to which the Defendant acknowledged the faulted meters as per Exhibit P20. As per Exhibit P19 par 5 on page 35 of the Joint Scheduling Memorandum it is clear that the four factories were getting power from the same transformer of 500 KVA. In Exhibit P.20 and paragraph 3 the District Manager Banda stated that a transformer is usually given an extra capacity of 20% capacity which is an extra 100 KVA making it to a total of 600KVA. If indeed the Plaintiff was consuming all the 524 KVA as the Defendant wants the Honourable Court to believe, it would mean that the balance of only 76 KVA running the other neighbouring three factories (Weldex, Wispro and AJ Coffee) - which is impossible. There is also a contradiction between Stella Nkini Ndiwalana - The Program manager MD's Office Umeme Ltd on P.E. 28 page 48 on the last heighted paragraph and the letter of the District Manager Banda Exhibit P. 29 paragraph 3 on the capacity of the extra capacity transformers.

As per As per Exhibit P.14 on page 31 (A) the said meter was installed in December 2011 with readings from other business entities. Meaning at installation it was too old and extremely used up. Later it was discovered that it was faulty and removed in April 2012. It was replaced with a brand new meter No. U31078 and the reading was 0000. See P.E. 18 on page 34. All this means that Umeme was not professional in doing their work. The Defendant is therefore liable for all the adverse consequences and damages occasioned to the Plaintiff emanating the faulty and sometimes old/already used up meters that were installed by the Defendant onto the Plaintiff's premises/factory. To justify that the meters were faulty, one of them displayed 524 KVA ways above the capacity of the transformer and the Plaintiff's power bills for the period of the faulty meters shot unreasonably very high. (See P.E. 9,10,11,12,14,15,16,17, and D.E. 5 on page 108 to 112 from September 2011 to August 2012. On 6th February 2012, as per D.E. on page 111 the Defendant billed the Plaintiff on s' February 2012 and the same bill was reversed on the very 6th

February 2012 and this went on up to 21st February 2012. He contended that this was clear unprofessionalism on the part of the Defendant.

According to regulation 7.1.1 (b) the Defendant owed a duty to the Plaintiff to install and maintain standard metering and ancillary equipment but failed in their duty by not only installing faulty meters but also irregularly basing the Plaintiff's consumption of Uganda shillings 106,316,886 on such faulty meters. ***Regulation* 12.3.2 of *the Electricity (Primary Grid Code) Regulations, 2003*** provides that where a licensee is unable to base a bill on a reading of the meter at a consumer's supply address because (c) the meter or ancillary equipment has recorded incorrectly: the licensee may provide the consumer with an estimated bill based on the consumer's reading of the meter or the consumer's prior billing history.

According to PW3, Mr. Nabeta Samuel on average Polla Plast would utilize electricity worth Uganda shillings 6 million per month. Comparing the Uganda shillings 6 million to the bills totalling to Uganda shillings 106,316,886 according to the two faulty meters such amount is unlawful and extortionist in nature since the Plaintiff could not have consumed that much electricity. In the premises the Plaintiff is not liable and the Defendant acted irregularly and unlawful by basing on the faulty meters to acquire the Plaintiff's monthly payments.

In reply the Defendants Counsel submitted that the Plaintiff alleges that the Defendant billed him on faulty meters because in a letter from the Defendant's manager tendered in Court as DX2 and PX20, the manager gave as a reason for changing the meters at the Plaintiff premise that the meters were faulty. Regulation 25 of the Electricity (Quality of service code) Regulations 2003, and Regulation 24.1.2 of the Electricity (Primary Grid code) Regulations 2005 provides that each licensee shall provide and install and continue to own and maintain all meters necessary for measurement of electricity delivered to its customers and also that a licensee shall not be allowed to put or use any meter that is not reliable and of a standard or type not approved by the Authority. It was therefore illegal to keep at a premise a meter that does not function properly which is why the Defendant replaced meters at the Plaintiff's premises that were faulting in a timely manner as the same is its mandate. The exhibit D2 also marked P 20 at page 36 and 105 of the trial bundle has the explanation for the changing of the meters at the Plaintiff's

premise written to the Plaintiff as is required by law and the Plaintiff duly acknowledged receipt of this letter and did not deny that it was served on him.

In the letter, the District Manager of Banda explains that the meters were replaced as their batteries became old. DWI explained in her testimony that such a meter with old batteries records less power than is consumed causing loss to the Defendant as opposed to the Plaintiff and therefore no harm was occasioned to the Plaintiff through the faulting but actually advantage as less power than was consumed was recorded and therefore billed for. As for the other meters, it is explained in exhibits D2 and P20 that they changed when a new metering system was rolled out by the Defendant. The actions were within the mandate of the Defendant.

The other issue explained in exhibit D2 and P20 is of the extra capacity of the generator of 20% and therefore the bill that showed the meter capacity as 524KV A was proper as the capacity could go up as far as 600 KV A.

The other issue of the industries in the vicinity is alien to the proceedings now before Court and of no consequence in any case as it is neither in the Pleadings or the evidence. The issue for Court's consideration herein is Polla Plast's bill. This issue also did not come up in the trial but is only being raised at the bar in the submissions by Counsel. The Defendants Counsel prayed that the issue is disregarded this argument as diversionary.

Based on the Defendant's arguments above, the Defendants Counsel submitted that the Plaintiff was billed on proper meters and those that faulted were duly replaced with expedience for the sole purpose of maintaining proper billing as is mandated by law.

Having resolved issue 2, 3 and 4 as above, the Defendants Counsel submitted that issue number 1 must then be resolved in the affirmative that the Plaintiff is liable to pay the total bill of Uganda shillings 155,157,223.83 which after the Joint Audit Report by the two parties tendered in Court on 5th November 2014 was in agreement of both parties revised upwards to Uganda shillings 172,356,467. Counsel submitted that the Plaintiff went further in owning the debt and engaged in a voluntary undertaking in Exhibit DX6.

The Plaintiff at the trial claims to have made the undertaking under duress and in his submissions, Counsel for the Plaintiff quoted the cases of Universe Tank ship Inc. of Monrovia vs. International Transport workers Federation and others (1983) AC 383 and North Ocean Shipping Co. Ltd vs. Hyundai Construction Co. Ltd (1979) QB 705 and Pai On vs. Lau Yiu (1980) AC 614 arguing that the Plaintiff made the undertaking under economic duress and undue influence.

The argument that the undertaking to pay for the power consumed was made under duress and undue influence is to say the least preposterous and a ploy by the Plaintiff to renege from his obligation to pay for power that he consumed to the detriment of the Defendant Company. All that the Defendant did was cut off its power as the same was not being paid for by the Plaintiff despite continuous consumption.

The Plaintiff could have been under pressure but the same could not possibly have been from the Defendant ordinary commercial/financial pressure in business exerted by his customers he was meant to supply Plastics to and other business pressures like rent payment, other creditors and many others that the Plaintiff witnesses 1 (the Plaintiff) and 3 (Mr. Nabeta) alluded to when they admitted in evidence that the Plaintiff as a businessman was heavily indebted.

Both local and foreign authorities have discussed the issue of economic duress and undue influence. The basic principles to make out a claim for economic duress were set out in the case of **Pao On & Others v. Lau Yiu & Another [1979] 3 All ER 65,** relying on the decisions of Lord Wilberforce and Lord Simon of Glaisdale, in **Barton v. Armstrong [1976] A.C. 104, at p. 121,** Lord Scarman ruled that there are criteria that are relevant in considering whether the Plaintiff acted voluntarily or not in signing an instrument or entering into a contract. That in determining whether there was coercion of the will such that there was no consent, it is material whether the person alleged to have been coerced did or did not protest; that at the time he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised, and finally, whether after entering the contract he took steps to avoid it.

This court also considered the principle of economic duress and undue influence in Esther Nankulima vs. Ann Nandawula Kabali, Miscellaneous Application 235 of

2013, Arising from Civil Suit 277 of 2012, and set out the principle that for economic duress to be made out the pressure must be unlawful, illegal, or not permitted by law. Court in the above case explained that the actual force has to be a wrongful act of force which overcomes the free will of a party.

Courts have further explained that financial pressure even where the bargaining positions are unequal, does not, without more, constitute duress and further that the threatened exercise of a party's legal right cannot constitute economic duress and two recent American cases illustrate this point. In **Hudson Valley Bank v. Banxcorp, No. *6628/10*, 28 Misc.3d 1232(A), 2010 N.Y**, Justice Alan Scheinkman of the Westchester County Commercial Division held that "where the alleged menace was ... to stop performance under a contract or to exercise a legal right, there is no actionable duress," and stressed that financial pressure, even where the bargaining positions are unequal, does not, without more, constitute duress. The court further emphasized that the threatened exercise of a party's legal right cannot constitute economic duress. In **Eastern Savings Bank v. Aguirre, No. *26258/09*, 30 Misc. 3d 1230(A), 2011 N.Y**, the facts similar to the facts herein are that the Defendant defaulted on a mortgage agreement with the Plaintiff that had been extended through a modification. In consideration of the modification, the Defendant signed a release of all claims against the Plaintiff. The Defendant later argued that the Plaintiff threatened foreclosure unless he signed the release. Thus, the Defendant maintained that he signed the mortgage modification agreement, which included the release, under a threat that precluded the exercise of his free will. The court disagreed, however, and held that any threat to foreclose on the first mortgage was not wrongful because the Plaintiff had the right to foreclose since the Defendant had not met the conditions of the first mortgage. Absent as shown that the threat was wrongful, the court found no economic duress

The Defendant's Counsel further submitted that this Honourable Court also held a similar view in **Liberty Construction Co. Ltd vs. Lamba Enterprises Ltd, HCT - 00 - CC - CS - 215 -2008**, holding that the pressure complained of to amount to economic duress must be illegitimate and improper. In the instant matter are that in entering an undertaking with the Defendant did not exert any unlawful pressure but only its legal, legitimate, proper and lawful right to disconnect electricity as the Plaintiff had a huge outstanding bill that was not paid.

Another important issue to consider in matters of economic duress is whether the party claiming economic duress or undue influence takes appropriate and prompt steps to avoid the contract or in the alternative affirm the same. This was considered by this Honourable Court in **Stephen Seruwagi Kavuma vs. Barclays Bank (U) Ltd (Misc. Appl. No.634 Of 2010), Arising from Civil Suit 332 of 2008.** The Court held that two questions had to be asked before economic duress could be satisfied: (1) did the victim protest at the time of the demand and (2) did the victim regard the transaction as closed or did he intend to repudiate the new agreement? Court held that it was clear from the evidence as evaluated that the applicant did not prove the two tests for economic duress to be satisfied. He neither protested at the time of signing the consent order and decree nor at any time after that, till he filed an Application 1 year and 9 months later. Court further held that there was also no evidence that he intended to repudiate the new agreement because he purported to honour it by issuing cheques which were dishonoured and paying about shillings 20 million. Court therefore found that the Plaintiff regarded the consent order and decree as closure to the suit and it would have remained so, had not the five cheques he issued to the respondent's advocates bounced and so attracted criminal investigations and probable prosecution.

The above precedent applies to the present suit in that the Plaintiff did not show any displeasure with the undertaking he now denies until he failed to pay as he had agreed and after his power was reconnected pursuant to the undertaking. He only protested after failing to pay according to the undertaking of May 2012, seven months later in November 2012 after he was disconnected according to exhibit D4 in October 2012. It must also be noted that by this time he had issued cheques attempting to make payment and had therefore ratified the undertaking.

In **Adrian Family Partners vs. ExxonMobil, No. *19344/01*, 23 Mise.3d 1120(A), 2007 N.Y.** Justice Scheinkman again declined to set aside a contract for economic duress. The Plaintiff in this case sought to rescind a contract for the sale of land. The parties had negotiated for the sale of a small parcel of land that the Defendant had previously leased from the Plaintiff. The sales contract was never signed by the Defendant, however, and instead the Defendant offered to purchase Plaintiff's land in its entirety. The Plaintiff accepted the offer and the transaction was completed. The Plaintiff brought a suit more than 12 months later, first seeking monetary

damages and later rescission of the contract based on duress, undue influence, fraud, breach of lease and breach of contract. The court pointed out that the lapse in time between the transaction closing and the filing of the action resulted in waiver of the economic duress claim, stressing the requirement that contracts made under duress be promptly repudiated or else be deemed affirmed.

In the instant case the contract was clearly affirmed as even positive steps were taken to enforce the contact by the Plaintiff which actions the Plaintiff benefited from as for example after signing the undertaking his power was reconnected and was only disconnected in October about 6 months later and after he failed to honour the terms of the undertaking having been reconnected.

The Plaintiff is barred by the doctrine of estoppels in law from accepting the contract when it benefits him and rejecting the same when it does not. In the case of **Stephen Seruwagi Kavuma vs. Barclays Bank (U) Ltd (Miscellaneous Application No.634 Of 2010), Arising from Civil Suit 332 of 2008 (supra),** Justice Mulyangoja explained that it is a well known principle of equity that one cannot approbate and reprobate at the same time. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage." **(See Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd, (1921) 2 KB 608,** at p 612, per Scrutton, LJ.). In the premises the Plaintiff maintains that the undertaking exhibit D6 is valid and enforceable.

In rejoinder on issues 4 the Plaintiff's Counsel reiterated earlier submissions and added that the Defendant's Manager of Banda Office, Mr. Duncan Mwesigwa accepted that the meters were removed when they were faulted on Plaintiff's Exhibit 20 precisely on page 20, first paragraph, last line. It was false for the Defendant to allege that the Plaintiff benefited from the faulty meters when there is clear evidence of irregular billing due to the faultiness of the said meters. **Clause 12.3.2(c) of the Electricity (Primary Grid Code) Regulations, 2003** provides that *"where a licensee is unable to base a bill on a reading of the meter at* a

consumer's supply address because the meter or ancillary equipment has recorded usage incorrectly, the licensee may provide the consumer with an estimated bill based on the consumer's reading of the meter or the consumer's prior billing history or where the consumer does not have a prior billing history, either average usage of electricity at the relevant tariff or average usage at the supply address, whichever is the lower." Secondly clause 12.5.1 of the **Electricity (Primary Grid Code) Regulations, 2003** provides that *"where a consumer is overcharged as a result of an error by a licensee, the licensee shall rectify the anomaly at the next billing."* The licensee in this case is the Defendant who without any colour of justification refused, failed and/or ignored to remedy the gross fault occasioned onto the Plaintiff by overcharging him and hiding under unreasonable ground that the said faultiness was advantageous to the Plaintiff. Counsel submitted that the Plaintiff was irregularly billed in respect of the faulty meters and invited the Court to disregard the Defendant's submissions in that regard and find in favour of the Plaintiff.

With reference to the several authorities on the issue of duress cited by the Defendant's Counsel, in which the Defendant maintains that the Plaintiff did not suffer economic duress the authorities cited are distinguishable. The cases of **Pao On & Others vs. Lau Yiu & Another [1979] 3 ALL ER 65 and Barton vs. Armstrong [1976] A.G. 104, at page 121** support Plaintiff's case and not the Defendant's defence. The latter case is an Australian/English contract law case relating to duress. The brief facts of that case are that Barton was the Managing Director of a Company, whose main business was in property development. Its main projects were going through 'Paradise Waters (Sales) Pty Ltd'. Barton made a deed so the company agreed to pay $140,000 to Armstrong, and buy his shares for $180,000. Armstrong was the chairman of the board and had threatened to have Barton killed. The Privy Council held that "*a person who agrees to a contract under physical duress may avoid the contract, even if the duress was not the main reason for agreeing to the bargain.*" In the present case, agents Defendant physically threatened the Plaintiff several times to cut off power if he refused to sign an undertaking and since the Plaintiff had various commitments with his clients to make deliveries, he had no choice due to pressure to enter into the said undertaking unwillingly. That is why the Plaintiff filed this suit to challenge the

unfair treatment by the Defendant in the Courts of law and the electricity tribunal. The case of **Esther Nankulima vs. Ann Nandawula Kabali, Miscellaneous Application No. 235 of 2013, Arising from Civil Suit No. 277 of 2012,** is a case where Counsel for the Plaintiff in the instant case had a privilege of arguing as Counsel in personal conduct up to its logical conclusion and the Defendant has misapplied that case to the present facts. In that case, the Plaintiff, Ann Nandawula Kabali had entered into a consent with the Defendant Esther Nankulima and filed it in Court as a consent judgment after receiving independent Counsel from their respective Counsel however, the Defendant refused, failed and/or ignored to fulfil her obligations and instead opted to file an application to set aside the said consent judgment on grounds that she entered into it under duress and the respective Counsel connived. In the present case there is no such consent judgment and an application to set the same aside but instead there is an undertaking entered into by the Plaintiff under duress having been physically threatened by the Defendant who had capacity to cut off power if the Plaintiff did not comply with its conditions.

The case of **Hudson Valley Bank vs. Banxcorp, No. 6628110, 28 Misc. 3d 1232 (A), 2010 N.Y,** is distinguishable from the present case. The brief facts are that the Plaintiff, Hudson Valley Bank, N.A sought a summary judgment in lieu of complaint, pursuant to CPLR 3213, against the Defendants, Banxcorp and Nobert Mehl. The Plaintiff sought summary judgment as to the current balance due and an order deferring and/or severing its claim for attorneys' fees to a subsequent application or motion. Defendants opposed the Plaintiff's motion and have purported to have interposed counterclaims against the Plaintiff. The Supreme Court of Westchester County, New York in the United States of America held that the motion by Plaintiff for summary judgment in lieu of complaint against the Defendants is granted. This case as discussed is different from the instant case/issue of economic duress.

Eastern Savings Bank vs. Aguirre, No. 26258109, 30 Misc. 3d 1230 (A), 2011 N.Y, is distinguishable from the present case. That case involved default on a mortgage agreement. The parties had entered into the said agreement freely and willingly and the Defendant failed to perform his part of the agreement. The agreement provided for foreclosure which the Defendant was aware in case of default and he was told to sign the release since he had defaulted and Court agreed

with the Plaintiff. In the instant case, the Plaintiff was threatened, coerced to enter into the said undertaking before signing it. He did it without his consent but had no choice since the Defendant was determined to cut off power if the former refused to sign.

As far as the case of Liberty Construction Co. Ltd vs. Lamba Enterprises Ltd, HCT-00-CC-CS-215-2008 is concerned, the Plaintiff's Counsel agrees with the holding and adds that the case supports the Plaintiff's case in that, the duress imposed onto the Plaintiff by the Defendant was illegitimate and improper as the latter threatened to cut off power if the former failed to sign the undertaking.

The cases of Stephen Seruwagi Kavuma vs. Barclays Bank (U) Ltd, Misc. Application No. 634 of 2010, Arising from Civil Suit No. 332 of 2008; Adrian Family Partners vs. ExxonMobil, No. 19344101, 23 Misc.3d 1120 (A), 2007 N. Y.; and Verschures Creameries Ltd. vs. Hull & Netherlands Steamship Co. Ltd., (1921) 2 K.B. 608, at p. 612, are all distinguishable from the present case since all raise the principle of not approbating as well as reprobating. One cannot accept the transaction as valid and at the same time say otherwise or make another offer to the contrary. In the present case, the Defendant forwarded its physical threats to the Plaintiff before signing the undertaking, the Plaintiff had no other choice but to painfully adhere to the Defendant's demands since it had capacity to cut off power if the Plaintiff chose to reject the undertaking, in the present case there was no consent and willingness at the time of signing the undertaking on the Plaintiff's part.

Issues 5 and 6

Issue 5: whether the Defendant is liable for the loss of the Plaintiff's machines and business?

The Plaintiffs Counsel submitted that at all material times, the Plaintiff was under immense pressure from the Defendant, whose electricity was a major factor in running the business of the Plaintiff as testified by PW1, and PW3. The Plaintiff avers that the conduct of the Defendant and or its agents in regards to the Plaintiff and his business constituted economic duress and undue influence. He relied on the case of **Universe Tank ship Inc. of Monrovia vs. International Transport**

Workers Federation & Others (1983) AC 383, for the holding that serious financial consequences because of a threat constituted economic duress. Similarly in **North Ocean Shipping Co. Ltd vs. Hyundai Construction Co. Ltd (1979) QB 705**, the facts were that the Plaintiff had paid one instalment of a $40 million contract to build a ship, the Defendant threatened not to proceed unless the Plaintiff paid an additional 10%. It was held by **Mocatta J.** that the threat not to build the ship amounted to economic duress because the Plaintiff already had independent contracts to deliver fuel using the ship which would suffer and the Plaintiff forced to pay heavily in damages. In **Pal On vs. Lau Yiu Long (1980) AC 614** at Page 635 the Privy Council held that ***"Duress, whatever form it takes, is a coercion of the will so as to vitiate consent"*** Further in that case Lord Scarman at Page 632, found that the commercial pressure alleged to constitute such duress, the Plaintiff must have entered the contract against his will, must have no alternative course open to him."

It is clear from the above precedents that threats which if not adhered to will reasonably occasion negative financial consequences amounts to economic duress and the Plaintiff must have no alternative course open to him or her. From the instant case the Plaintiff expediently made several undertakings to pay all the above unlawful bills such as the fraud charge, the transferred bills and bills based on faulty meters because the Defendant and or its agents would not supply him with electricity if he did not heed to their demands and thus he would be unable to meet his clients' demands and risk paying heavily damages.

As far as the undertaking is concerned it is the testimony of the Plaintiff that even when he paid part of the monies in the undertaking supply of power to his factory remained irregular and therefore without electricity power supply there was no way the Plaintiff's business would thrive/survive, thus the Defendant is liable for the loss of the Plaintiff's business.

Further, to aggravate the Plaintiff's loss the Defendant wrote to the Plaintiff's Landlord to withhold his property for non-payment of the outstanding electricity bill as per **Plaintiff's Exhibit 23**. This the Defendant did without obtaining a Court Order. With the property withheld and with no Electricity to run the business the Plaintiff was unable to pay his rent and thus since the Landlord was in possession of

the Plaintiff's Machines on the directions of the Defendant, the land Lord obtained a Court Order which he executed by attaching and selling the already withheld Plaintiff's equipment and machines. The Plaintiff's Counsel submitted that the Defendant directly led to the loss of the Plaintiff's business and machines because it ought to have foreseen that by irregularly billing the Plaintiff unlawfully and asking the Plaintiff's Landlord to withhold the Plaintiff's property, the Plaintiff would incur financial consequences such as loss of business and machines.

DW2 when asked on the procedure of dealing with defaulting Clients of the Defendant stated on oath that what should have been done was to issue a bill with a 14 day notice. That if one is over indebted the bill will have the phrase "You are over due by so many days". DW2 rightly added that if the bill is not settled by the Client after being served, the matter is taken to court. According to DW2, if all avenues fail, the debt is sometimes written off.

The Plaintiff was always diligent in his pursuit of Justice. The Plaintiff lost sleep and moved to all the relevant forums to see to it that the Defendant remedies some of the acts/omissions that were causing the Plaintiff immense suffering and loss according to exhibits P.E. 1, P.E. 25 P.E. 29 and P.E. 30. The Plaintiff cannot therefore be accused of sitting on his rights as he exhausted all reasonable avenues to have the matter resolved amicably but the Defendant refused. That left the Plaintiff the option to come before this honourable Court as the last resort in pursuit of justice. DW 2 testified that by the Defendant writing to the Plaintiff's landlord to withhold the Plaintiff's factory machines under exhibit P23 this was not the normal procedure for debt recovery. She summed up by saying that attaching the client's goods was wrong and irregular.

Counsel submitted that loss of the Plaintiff's factory machines and the loss of the entire Plaintiff's business is directly attributed to the irregular and unprofessional manner in which the Defendant conducted its affairs with the Plaintiff and as such the Defendant should be held liable.

Issue 6: What are the appropriate remedies available to the parties?

The Plaintiff's Counsel relies on the plaint for the remedies namely:

A declaration that the Plaintiff is not liable to pay power bills of Shillings 60,482,777. Secondly a declaration that the Plaintiff is not liable to pay power bills of Shillings 106,316,886 assessed on 2 faulty meters. Thirdly the Plaintiff sought a declaration that the Plaintiff was unlawfully charged for causing energy loss and is not liable to pay the fraud charge of Uganda shillings 51.575.373.68. The Plaintiff also prayed for nullification of the undertaking of 9th May 2012

The Plaintiff also prayed for compensation to the Plaintiff for loss of Machines, economic loss, loss of business, emotional distress and mental anguish, general damages, Interest on at a rate of 24% p.a. from the date of filing of this suit till the date of judgment. Interest on the decretal sum at a rate of 20% per annum from the date of judgment until payment in full, costs of the suit and any other appropriate remedy that the Honourable court deems fit.

Following the Plaintiff's resolution of issues 1-5 above Counsel invited the court to grant the prayers in the plaint.

As per the prayer for compensation and general damages are concerned, they are awarded so as to compensate the injured party according to Earl Jowitt in **British Transport Commission vs. Gourley (1956) AC** at 185 at page 197. It was held that the broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such as a sum of money as will put him in the position as he would have been if he had not sustained the injuries.

Horton vs. Colwyn Bay And Colwyn Urban District Council (1908) 1 Kb 327 at Page 341, Buckley LJ stated that "... *if an actionable wrong has been done* to *the claimant he is entitled* to *recover all damage resulting from the wrong, he would have had no right* of *action for some part* of *the damage if the wrong had not also created* a *damage which was actionable"*

The Plaintiff's Counsel prayed that the Plaintiff is compensated for loss of machines, economic loss, loss of business and emotional distress and to be reinstated to a position he formerly was before the irregular and unlawful acts/conduct of the Defendant and its agents. The value of the Plaintiff's entire machines that were

purchased from various entities accordingly to Plaintiffs exhibit P 31 at pages 52-56 of the Joint scheduling memorandum/trial bundle are valued at $2,534,107.

To prove that the Plaintiff's factory indeed had valuable Machines, The Plaintiff duly attached to his pleadings Other Valuation reports such as that of Bank of Africa Meys Consult valuation report Plaintiff Exhibit P33 at page 69 to 86 of the trial Bundle. It must be noted that when professionals are valuing Machines Court must take into consideration the factors such as, the purpose of the valuation, depreciation, etcetera. In exhibit P 33 the Plaintiff's purpose for the valuation was to get a loan facility from Bank of Africa and a portion (only 30%) of the Plaintiff's valued assets by Meys Consult was valued then to be worth Uganda shillings 2,110,950,000.

Counsel further submitted that in exhibit P34 Spear Link Auctioneers instructed Systems Engineers to extremely undervalue the Machines they attached but this did not take away the fact that the Machines were indeed and are very valuable. He submitted that he who pays the piper calls the tune.

The evidence that the Plaintiff's factory machinery was worth $2,534,107 was not at all rebutted by the Defendant and the court should order the Defendant to compensate the Plaintiff for the loss of factory machines by paying the Plaintiff USD. 2,534,107 as special damages (excluding the cost of transportation from India, China, Japan, S. Korea, Taiwan and Germany)

In as regards Compensation for loss of business/general damages, the Plaintiff also testified that his business that was growing is no more owing to the irregularities and illegalities orchestrated by the Defendant. In his written testimony under Par. 47 the Plaintiff (PW1) testified that the Defendant stifled his operations hence occasioning him business loss. The Plaintiff engaged professional auditors from - M/S Bernard Mukooli & Company to conduct an Audit as per exhibit P 32 and it was professionally ascertained that save for the atrocities occasioned by the Defendant towards the Plaintiff, the Plaintiff's Polla Plast business was profitable and was steadily growing locally and regionally. Mr. Mayanja Livingstone the sales man of the Plaintiff testified that "*Before Umeme started interfering with our production, business was good and I personally would generate sales of Uganda*

shillings 40 million per week during peak season and about Uganda shillings 25 million per week during peak seasons." This evidence stands unchallenged.

The Plaintiff in paragraph 48 of his witness statement prays for Compensation of USD. 2,000,000 for loss of business and loss of good will over the period of 4 years (as at then since it is now almost five years) as prayed in paragraph 19(b) of the amended Plaint. The Plaintiff further prays for general damages worth Ugx.100,000,000/= for the emotional distress, mental anguish and psychological torture occasioned to him by the Defendant and its agents when they handled his business affairs irregularly.

Costs

The Plaintiff's Counsel further submitted that the rule of thumb is that unless there are special factors relating to the Plaintiff's conduct leading to the institution of the suit, costs follow the event. In this case, The Plaintiff should be awarded the costs of the suit.

In all, since the Plaintiff has proved his case on a balance of probability, he should be granted the remedies sought in his pleadings.

As per the Defendant's Counterclaim, the Defendant has failed to prove the allegations contained in the counterclaim and therefore should be dismissed with costs.

In reply the Defendants Counsel submitted that under issue 5, it is clear from the evidence that the Plaintiffs machines were sold pursuant to a Court order in a suit that the Plaintiffs landlord instituted against it for non-payment of rent, the loss of the machines and consequently the business therefore had nothing to do with the Plaintiff and arose out of an order of Court in a suit that the Defendant was not a party to. The Plaintiff confirmed the above facts in Court in his testimony and the Plaintiffs submissions also confirm the same.

The allegation that that pursuant to Exhibit 23, the Landlord withheld the property holds no water as the said letter was inconsequential and was not acted upon.

The Plaintiff already had outstanding rent arrears that caused attachment of the goods and the ultimate sale was a Court order arising from a suit for non-payment

of rent by the Land Lord, the Defendant therefore has no nexus to the sale of the machines and cannot be liable under the same.

The defence also submits that having resolved all issues to the effect that the Plaintiff is liable to pay the aggregated bill of Uganda shillings 155,157,226.83 and that was jointly revised to Uganda shillings 172,356,467 in the Joint Audit Report between the parties, the suit by the Plaintiff against the Defendant ought to be dismissed with costs to the Defendant. Furthermore the Defendants Counsel prayed that the following orders are issues namely:

That judgment should be entered in favour of the Counter claimant for the payment of the value of the outstanding bill of Uganda shillings 172,357,467. Secondly interest of the liquidated amount be awarded at commercial rate from the date of accrual till payment in full. Thirdly Counsel prayed that general damages are awarded to the Counter claimant to compensate the Counter claimant for monies due to it though withheld unfairly and costs of the counterclaim are awarded to the Counter claimant

In rejoinder on issues 5 and 6 the Plaintiff's Counsel reiterated earlier submissions and prayers on these issues and added that the Defendant is liable for the loss of the Plaintiff's machines and the Plaintiff is entitled to the remedies sought in the Plaint as per the earlier written submissions.

He further submitted that the authorities cited by the Plaintiffs Counsel of **British Transport Commission vs. Gourley (1956) AC185 at page 197; and Horton vs. Colwyn Bay And Colwyn Urban District Council (1908) 1 KB 327 a Page 341** are not disputed by the Defendant and the court should find them persuasive, relevant and applicable to the Plaintiff's case.

Furthermore the Plaintiff's Counsel submitted that article 126(2) (c) of the constitution of the Republic of Uganda, 1995 provides that victims of wrong shall be adequately compensated. The Plaintiff in the instant case is a victim of deliberate/ intended wrongs by the Defendant wherein the latter is responsible. Finally he prayed that the court disregards the Defendant's submissions in regard to these issues and be pleased to grant the Plaintiff all the prayers sought for in the earlier submissions.

Judgment

I have carefully considered the Plaintiffs action against the Defendant as well as the counterclaim of the Defendant. I have read through the written submissions of Counsel which have been reproduced above and the authorities cited as well as the evidence on record. The following issues were framed for resolution of this dispute which revolves around electricity bills and the actions of the parties in relation to failure by the Plaintiff to pay the bills. The following issues were agreed for resolution of this dispute namely:

1. Whether the Plaintiff is liable to pay the outstanding electricity Bill of Uganda shillings 155,157,226.83 to the Defendant.
2. Whether the Defendant illegally and unlawfully transferred the Bill of Uganda shillings 60,482,777/= to the Plaintiff?
3. Whether the Defendant irregularly and unlawfully fined the Plaintiff in respect to the imposed fraud charge of Uganda shillings 51, 575,373/=?
4. Whether the Defendant irregularly and unlawfully billed the Plaintiff in respect of faulty meter readings?
5. Whether the Defendant is liable for the loss of the Plaintiff's machines and business?
6. What are the appropriate remedies available to the parties?

Issues number 1, 2, 3 and 4 are inextricably intertwined and cannot be considered in isolation of one another. They also deal with the counterclaim of the Defendant wherein the Defendant claims Uganda shillings 155,157,226.83 in unpaid electricity bills. The first issue is therefore whether the Plaintiff is liable to pay the sum of Uganda shillings 155,157,226.83. However the issue cannot be resolved without considering issues number 2, 3 and 4 which deal with whether that a bill is due and is lawful. Issue number 5 depends on whether issues number 2, 3 and 4, if resolved in favour of the Plaintiff, what the consequential effect thereof is as to whether the Defendant is liable for the loss of the Plaintiff's machines and business. The loss of the Plaintiffs machines and business occurred as a result of failure to operate the Plaintiffs factory allegedly due to lack of power and failure to fulfil obligations as a result thereof. Consequently the Plaintiff in failing to fulfil its obligations including rent, was sued and his property attached.

Issue number five can also be considered on the basis of the law as to whether it was lawful to disconnect power to the Plaintiff by way of distress for unpaid electricity bills.

In a joint audit conducted by the parties there are certain agreed positions which relates to the resolution of the above issues. It is agreed that the bill of Uganda shillings 155,157,226.83 charged by the Defendant on the Plaintiff arose out of three items. These three items are disclosed in the joint audit report. The dispute relates to the transferred bill of Uganda shillings 60,482,777/=, a fraud charge of Uganda shillings 51,575,373/= and lastly a third amount based on alleged billing using faulty meters.

According to the audit report and in an agreement dated 31st of October 2014 it is written by the parties that pursuant to a meeting held on 21 October 2014 the total payments made by Polla Plast from the period November 2008 to July 2013 were Uganda shillings 359,720,585/=. Secondly bills recorded by the Defendant as due amounts to Uganda shillings 532,077,052/=. The Plaintiffs records show Uganda shillings 419,948,083/=. The difference of Uganda shillings 112,129,969/= comes as a result of the transfer charge of Uganda shillings 60,482,777/= on 30 March 2010 and a fraud charge of Uganda shillings 51,575,370 on 12 April 2010.

From the above agreed facts, the issues can be narrowed down to deciding whether the transfer charge of Uganda shillings 60,452,777/= on 30th of March 2010 was lawful? Secondly whether the fraud charge of Uganda shillings 51,475,370/= on 12 April 2010 was lawful? The rest of the counterclaim or dispute of the Plaintiff deals with the question of faulty meters which will be handled separately. The question of whether Uganda shillings 60,452,777/= was transferred from another customer to the Plaintiff is a question of fact and is to be considered from the evidence. The question of fact relates to the chronology of events and the facts relating to the meters when the Plaintiff took over the premises for its factory from Messieurs BMK Industries. The Plaintiff was a tenant of Messieurs BMK Industries. In considering the evidence only of what actually happened up to the time the Plaintiff was disconnected, issues number 1, 2, 3, 4 and 5 would have been substantially resolved and few matters of law need to be addressed in that regard.

I have carefully considered the Plaintiff's evidence. The Plaintiff Mr Makubuya Enoch William testified as PW1. The basic case is that he is a local Ugandan businessman who had started dealing in the business of buying and recycling plastic materials in 2000. He used to sell to local plastic manufacturers such as BMK Industries and Golden Multipurpose including a third manufacturer. On 1 March 2008, he entered into a sales agreement with BMK Industries for the purchase of plastic manufacturing machines and equipment. The agreement is exhibit P2. Exhibit P2 provided in the recitals thereof that the vendor who is BMK Industries of PO Box 5234, Kampala and who is the owner of the plastic manufacturing factory at Nakawa, Ntinda is willing and desirous of selling the machinery of the factory to the Plaintiff. Secondly BMK wrote that it was willing to share the premises where the purchaser shall operate the machinery bought at the factory for production of plastic materials. In clause 7 thereof it is provided that the vendor shall pass ownership of the machinery to the purchaser upon completion of full payment of the purchase price. In paragraph 8 of the agreement it is provided that the purchaser shall pay utility bills and obtain his own electric meter box to pay his electricity bills consumed on the premises. Secondly the purchaser undertook to pay 70% of the water bills charged on the premises.

The Plaintiff and BMK on 10 November 2008 executed another sales agreement which was tendered in evidence as exhibit P3. In the second agreement, no reference was made to the utility bills. PW1 testified that he continued to buy more machines from other vendors. After purchasing the entire factory machines of BMK Industries between 1st of March 2008 and November 2008 he went on paying the utility bills including electricity using account number 100192145 in the names of BMK Industries. Secondly he testified in sharing the electricity meter for five months, he used to share the cost of electricity bill based on the level of one's consumption. In November 2008 he agreed with his landlord BMK industries to change the account name from BMK Industries to Polla Plast and the Defendant gave him account number 200664023. After changing the account to Polla Plast he was duly paying the electricity bills.

On 9 February 2010 Hotel Africana Ltd wrote a letter to the Area Manager of the Defendant instructing the Defendant to transfer an outstanding electricity bill of Hotel Africana amounting to Uganda shillings 64,000,000/= to the Polla Plast

account without his consent. The letter was not copied to him. The letter was adduced in evidence as exhibit P5. Exhibit P5 is addressed to the Area Manager of Banda Area of the Defendant company and is dated Tuesday, February 9, 2010. The subject line of the letter reads "transfer outstanding bill on account number 110933009 from Hotel Africana Limited to Polla Plast Ltd." The letter reads as follows:

> "We are surprised, dismayed and disappointed by the lack of action on UMEME Ltd's part.
>
> It is, 15 months now, since October 2008 when Polla Plast Ltd and Hotel Africana Ltd requested, that the caption UMEME consumer account number 110933009 with an outstanding balance of Uganda shillings 64 million be transferred to Polla Plast Ltd's names, who have utilised and are responsible for the accumulation of the above electricity Bill.
>
> Despite Polla Plast Ltd's communication to that effect (copies of letters enclosed), way back in October 2008, to date no substantial steps have been taken by UMEME Limited to implement our request. Even after assurances from Mr Trevor... (The delivery controller UMEME Banda) letter, copy attached, that the request would be implemented as per service order number 4005 5094. We are now left wondering, what is the agenda!!!!!
>
> Our appeal to you is that you implement our request in order to avoid a possible loss in revenue by UMEME limited, and to avoid future embarrassments to the Hotel.
>
> We await your confirmation to that effect.
>
> Yours sincerely
>
> Haruna Kalule Kibirige
>
> Managing Director..."

The letter is copied to other officers of Hotel Africana Ltd but not to the Plaintiff. Another significant detail is that the author of the letter is also the proprietor of BMK Industries according to exhibit P 38 which is the certificate of registration of

BMK industries and the particulars thereof. Furthermore in comparison to the first agreement exhibit P2 dated 1st of March 2008, the above letter makes reference to an undertaking with effect from October 2008 for the transfer of account numbers. In exhibit P4 the account number for UMEME electricity of BMK industries stated to be at factory close Ntinda industrial area, is 100192145. This is different from the account number of Hotel Africana quoted in exhibit P5 which account number is 110933009. In paragraph 10 of the witness statement of PW1 he testified that in November 2008, he agreed with his landlord BMK industries to change the account name from BMK to that of Polla Plast and the Defendant gave him another account number 200664023. The Plaintiff kept on paying electricity after changing the account to Polla Plast. He testified that there was no contractual obligation or consensus between Polla Plast, Hotel Africana Ltd and UMEME limited to transfer the account of Hotel Africana and electricity bill thereof to Polla Plast. As far as is relevant to the question of transfer of meters and electricity bills, PW1 further testified that on 29 October 2010 the Managing Director of Hotel Africana wrote a letter to Polla Plast accepting that they were indebted to Polla Plast in the sum of Uganda shillings 9,600,000/= consumed by Hotel Africana warehouse which is connected to the Plaintiff's meter according to exhibit PE 8.

Exhibit PE 8 is a letter written by Hotel Africana Ltd to the Managing Director of Polla Plast. In the letter it is written that Hotel Africana carried out a study to estimate the consumption they were responsible for a period of two years that is from September 2008 to September 2010. They arrived at an estimate of Uganda shillings 400,000/= per month consumed by Hotel Africana and its tenants. In that letter Hotel Africana accepted liability to settle an amount of Uganda shillings 9,600,000/=.

The documentary evidence shows that an electricity bill issued by UMEME on 1 October 2008 was addressed to BMK Industries, factory close Ntinda Nakawa on account number 100192145 in exhibit P4.

In exhibit P9 which is an electricity Bill addressed to Polla Plast dated 4th of September 2011, the account number of Polla Plast is 200664023 factory close, Ntinda Nakawa. In exhibit P 10 that is another electricity bill addressed to Polla Plast on the same account number. Exhibit P11 is addressed to Polla Plast and is

another electricity Bill for the same account number. This goes for exhibit P12 as well. There are several other exhibits containing bills addressed to the Plaintiff with the same account number of 200664023 namely exhibit P 14, P 15, P16, P17 and exhibit P 18.

PW1 further testified that in the circumstances it was impossible for him to owe Uganda shillings 64,000,000/= when he was paying his bills promptly. On 16 December 2011 the Managing Director of Hotel Africana sent a statement showing a payment schedule. This was tendered in evidence as exhibit P13.

PW1 was cross examined extensively on the question of transfer of meters and the electricity bill of Uganda shillings 64,000,000/=. He reaffirmed that he operated the account under the names of BMK for about five months. The Defendant was not aware of the arrangement since he paid his monies to BMK Industries. Two matters arose in cross examination. The first is cross examination on DID1 which is supposed to be a letter from Polla Plast dated 20th of October 2008 accepting responsibility for account number 110933009. The document was not initially admitted in evidence because PW1 responded and was able to demonstrate that even the letterhead deferred from his own letterhead which had been tendered in evidence on other correspondences such as exhibit D7. The box number in DID1 is PO Box 341 Kampala while that in exhibit D7 is PO Box 24954. Secondly the signatures on the two documents attributed to PW1 deferred. The document will be considered finally as to whether it is a valid document on the ground of its being suspect or a forgery and whether it should be used in evidence. DID1 purported to be a letter written by Polla Plast to the management of Hotel Africana accepting responsibility for accumulated electricity bills of Uganda shillings 64,000,000/= on account number 110933009. It also purported to request the management of Hotel Africana to allow Polla Plast to change the account into their names.

The second matter on which the Plaintiff's managing director PW1 was cross examined is exhibit D6 executed on the 9th of May 2012. It is a document entitled “In the matter of an undertaking” by PW1. The document is drawn by Kampala Associated Advocates in which PW1 acknowledged indebtedness to UMEME limited to the tune of Uganda shillings 137,614,450/= on electricity account number 200664023. PW1 agreed that he signed this document but under duress. He

testified that he promised to pay because he was tied up. He admitted that he breached the undertaking and in paragraph 8 he undertook in default that UMEME limited would disconnect powers and take measures to recover the debt. He testified that he signed because he wanted power and had been disconnected for about a month. He could not fulfil his business obligations and obviously could not make money to meet his obligations. Furthermore he testified in re-examination that UMEME limited removed poles bringing power to the Plaintiff's premises in issue in October 2012. The meter was put 100 m from the transformer and it continued reading electricity consumption every month when he had no connection to power. The Plaintiff's factory machines were attached in March 2013 and auctioned. UMEME limited kept on sending electricity bills up to July 2013. PW1 is of the opinion that his landlord connived with UMEME limited officials to take over or frustrate his business because they exchanged correspondence between themselves. UMEME limited wrote to BMK to take over his machines.

PW2 Mr. Ndeegwe David used to work for the Plaintiff. He testified about the loss of business and goodwill.

PW3 Mr Samuel Nabeta testified that the Plaintiff was always off the grid because the Plaintiff was always being put off power on account of the transferred bill of Hotel Africana and levies on the fraud charge on the Plaintiff. He testified that there was a problem of billing and instead of dealing with the Plaintiffs complaint, the Defendant disconnected power and coerced the Plaintiff to sign an undertaking on the 9th of May 2012 to pay 70% of the contested sum of money allegedly owed to them. He was a witness to the undertaking to pay UMEME limited exhibit D6. He was arrested by the time of the undertaking. According to him the Plaintiff paid bills diligently except that there was a transferred bill, fraud charge and installation of faulty meters.

PW4 Mr Mayanja Livingstone, a salesman of the Plaintiff also testified. His testimony however is about the business and not the facts about the transfer of electricity bill, faulty meters or fraud charge. He did not know why the Plaintiff company was disconnected.

PW4 Mr Walugembe Dennis driver of the Plaintiff also testified. His written testimony as well as cross examination does not touch on the question of the fraud

charge, transfer of electricity bill and faulty meters. He did not know why electricity supply was cut off.

On the other hand the Defendant called two witnesses and closed its case. The first witness Joyce Nanziri testified as DW1. She worked as a District Manager of Banda in the Defendant company between April 2012 and on March 2014 and details of the facts she testified about were gleaned from the official records. In paragraph 3 of her written testimony she testified that the Plaintiff took over his business premises from Hotel Africana which was yet another customer of the Defendant operating under account number 11033099 according to exhibit D7. She further relied on DID1. Furthermore she testified in paragraph 4 that the Plaintiff carried out his business under the Hotel Africana meter number for sometime after which he asked to be given his own account number. Furthermore that the Plaintiff and Hotel Africana requested that the bill of Uganda shillings 64,000,000/= to be transferred from Hotel Africana account to the Plaintiffs according to exhibit D7. The Plaintiff's power supply was disconnected for refusal to pay outstanding electricity bills based on actual consumption. On several occasions she testified that the Plaintiff was found to have reconnected his power supply without the consent of the Defendant and without paying outstanding electricity bills.

Exhibit D7 is a letter dated 4th of September 2011 written by PW1 on the subject requiring the manager UMEME limited to reconnect electricity and to allow the Plaintiff to pay arrears of Uganda shillings 114,019,962/= in 28 equal monthly instalments of Uganda shillings 4,000,000/=. In paragraphs 2 and 3 thereof the Plaintiff writes as follows:

> "I am proud to tell you that I have been a good payee of the electricity which I have so far consumed since Polla Plast came into existence. The only arrears outstanding are the 64 million shillings which figure was brought from Hotel Africana and 51 million shillings which was the alleged fraud bill.
>
> Please accept my payment plan. I confess, I will clear the arrears if I am given the requested payment schedule."

The controversy that arose during cross examination is whether the Plaintiff took over from Hotel Africana or from BMK Industries. DW1 was unsure whether the

Plaintiff lied when he said that he took over the account of BMK Industries. On further cross examination DW1 testified that the account she referred to was a different account from that of BMK Industries. She testified that there was a letter from Polla Plast requesting UMEME limited to transfer the account of Hotel Africana and there was another letter from Hotel Africana requesting for the transfer. The parties had a verbal consent and she was not present when they agreed. She did not know whether Polla Plast was copied on to the correspondence. However the letter was accompanied by a letter from Polla Plast. In re-examination she testified that there was a request from Polla Plast to open an account in the names of the Plaintiff and for the bill to be transferred into their accounts. This was with reference to the document DID1 which had not yet been tendered in evidence. In any case the undertaking exhibit D7 includes the amount of Uganda shillings 64,000,000/= brought from Hotel Africana.

DW 2 Agnes Nalwanga, an officer of the Defendant in the Operations Department testified that the Plaintiff was a customer of the Defendant company operating in the Banda area under account number 200664023. The Plaintiff took over the premises from Hotel Africana and BMK Industries and was operating under account number 110933009. In the premises that the Plaintiff took over, BMK Industries Ltd and hotel Africana laundry equipment were on side and the Plaintiff was operating on another side. Those premises had one account with the Defendant company. She testified that the Plaintiff carried out his business under the Hotel Africana meter number for sometime after which he was asked to get his own account number. Furthermore that the Plaintiff and BMK Industries requested that the bill of 64,000,000/= is transferred from BMK Industries (Hotel Africana) account to the Plaintiff. Paragraphs 3, 4, 5, and 6 of the written testimony of DW2 makes reference to BMK industries and Hotel Africana as if they are the same entity or same person.

In cross examination Agnes Nalwanga testified that she joined the Defendant on 1 March 2005. PW1 Mr Makubuya came to her in 2008 and said he was a tenant of BMK industries. However in cross examination she testified that BMK and Hotel Africana had two meters. Secondly the premises had two accounts. The record of UMEME limited shows that the Plaintiff took over the Hotel Africana number. The witness further gives meter numbers E201278 for the account number in the names of BMK industries. However on further cross examination she established that the

meter numbers in the names of Polla Plast was E201278. A copy bill in the names of Polla Plast dated 12th of December 2009 for meter number E201278 was exhibited as P37. She was not aware that BMK industries and Hotel Africana were two distinct entities. Furthermore the certificate of registration of BMK Industries was tendered in evidence as exhibit P 38 with no objection from the defence. Furthermore she testified that the Plaintiff took over the indebtedness of Hotel Africana after a formal request to the Defendant. Further reference was made to DID1 and after consideration by the court for it to be exhibited; the application was refused on the ground that there was no witness who ever claimed to have delivered the document to the Defendant. Secondly exhibit P5 which is a letter from Hotel Africana Ltd refers to a request by Polla Plast Ltd but makes no reference to the document. Thirdly the document does not have the same features in its headed letter as other documents admitted by PW1 the MD of Polla Plast. Furthermore PW1 demonstrated that the signature on DID1 which document is the alleged letter from the Plaintiff asking to take over a debt of Uganda shillings 64 million from Hotel Africana was not his signature. It was also not written in his characteristic style. The date on the letter was handwritten and he suspected that it was a forgery generated from Nasser road. I established that the document was questionable and the issue of admissibility was left for final address of Counsel.

It is my final ruling that the document would be tendered in evidence on the following grounds:

Firstly, the Plaintiff through PW1 testified that there was some correspondence between the managing director of Hotel Africana Ltd and the Defendant to which he was not privy. This document is exhibit P5 which was tendered by consent of the parties. Exhibit P5 explicitly refers to a letter of Polla Plast and a copy of the letter was attached. However a copy of the letter was not supplied with the exhibit but was supplied by the defence separately. DW1 and DW2 testified that it was the letter used by the Defendant for the transfer of the bill of about 60,000,000/= to the Plaintiff. The Defendant relied on that document. It is therefore my finding that the document is admissible as the document used by the Defendant for the transfer of the bill of Hotel Africana Ltd to the Plaintiff's account. However as to whether the use of the document was lawful in light of the Plaintiff's denial of having written the document is a matter on the merits. It is a question of what weight should be

attached to document DID1. The document DID1 is admitted in evidence as exhibit D8 and I will continue to assess the weight of evidence.

It is my finding that the document does not support the Defendant's case because there was no direct witness who could prove that it had been delivered to the Defendant. Secondly no evidence was led to prove that the signature on the document was that of the Plaintiff or any other person authorised by the Plaintiff. The Plaintiff demonstrated that the document was not on the characteristic letterhead of the Plaintiff Messieurs Polla Plast but only purports to be so and it even had a different box number on the purported letterhead. Though the Defendant's Counsel submitted that the Box number beginning with 341 is in the agreement as 34157, (see exhibit P2 and P3), this is not sufficient to prove that it is the Plaintiff's document. In fact DID1 also has similar heading to the Plaintiffs headed letter which PW1 admitted. Finally it was not signed by the Plaintiff's managing director and he testified that it was his characteristic style to include the date in type script. Exhibit D8 had a handwritten date number of 20th of October 2008. The signature on the document is of an unknown person. The document being hotly contested the burden shifted to the defence to prove it in evidence as the Plaintiff's document. No handwriting expert opinion was sought and the only credible testimony is that of the Plaintiffs Managing Director Mr. Makubuya that he did not sign the document. Finally the acknowledgement of indebtedness of the Plaintiff on the basis of transfer of the bill of Hotel Africana can be considered on its own merits below.

I have carefully considered the evidence on the question of whether the Plaintiff took over the account of Hotel Africana or BMK Industries. The controversy was clouded by the reference to meter numbers by the Defendant's witnesses. It was however apparent that a clear distinction exists between an account number and a meter number. The evidence also establishes that faulty meters were removed and replaced by others without affecting the account number of the Plaintiff. Furthermore the controversy as relates to the account numbers is specifically a controversy arising from the pleadings. It is specifically pleaded in paragraph 4 (vi), (viii) of the amended plaint that it was BMK UMEME electricity account number 100192145 which was transferred to Polla Plast and not that of Hotel Africana UMEME electricity account number 110933009. Furthermore the Plaintiff pleaded

that on 30 March 2010 the Defendant without any justification whatsoever unlawfully transferred the power bill of Uganda shillings 60,482,777/= from account number 1103 3099 of Hotel Africana to his account number 200664023 and demanded payment or else be disconnected. In the amended written statement of defence and counterclaim of the Defendant paragraph 9 thereof it is averred that in response to paragraph 4 (viii) of the plaint, the same is denied and the Plaintiff shall be put to strict proof thereof. Furthermore in response the Defendant shall aver that it has never transferred any power bill from account number 11033099 to the Plaintiff's account number 200664023 as alleged. Finally in the reply to the amended defence and counterclaim paragraph 4 thereof the Plaintiff averred that the Defendant unlawfully transferred the power bill of Hotel Africana account number 110933009 worth Uganda shillings 64,000,000/= to the Plaintiff.

From the evidence on record account number 110933009 belonged to Hotel Africana Ltd. In exhibit P5 the letter written by Hotel Africana Ltd dated 9th of February 2010, the Managing Director of Hotel Africana Limited wrote to the Area Manager Banda of UMEME Ltd on the subject of transfer of outstanding bill on account number 110933009 from Hotel Africana Ltd to Polla Plast Ltd. The question of whether a bill of Uganda shillings 64,000,000/= as contained in exhibit P5 in a letter from the managing director of Hotel Africana was transferred to the Plaintiff is a question of fact. However paragraph 9 of the written statement of defence denied that the said amount was transferred to the Plaintiff's account number 200664023. The written testimony of Agnes Nalwanga paragraph 3 thereof is that the Plaintiff took over his business premises from Hotel Africana and BMK industries operating under account number 110933009. In paragraph 6 of the written testimony she testified that the Plaintiff and BMK industries (Hotel Africana) requested that a bill of Uganda shillings 64,000,000/= is transferred from BMK industries (Hotel Africana) account with the Plaintiffs according to exhibit D7. The testimony supports the evidence of Joyce Nanziri in paragraph 3 of the written testimony that the Plaintiff took over his business premises from Hotel Africana which was another customer of the Defendant operating under account number 11033099. Secondly in paragraph 5 of her written testimony she testified that the Plaintiff and Hotel Africana requested that a bill of Uganda shillings 64,000,000/= is transferred from Hotel Africana account to the Plaintiff's account.

The Plaintiff on the other hand testified through its managing director PW1 that it only inherited an account from BMK Industries. Before delving into the evidence, it is apparent that the Plaintiff had one account with the Defendant. Secondly the defence adduced irreconcilable evidence from its own pleadings. Paragraph 9 of the written statement of defence of the Defendant flatly contradicts the testimony DW1 and DW2. The witnesses flatly contradict paragraph 9 of the amended written statement of defence which for emphasis is quoted hereunder:

> "9. Paragraph 4 (viii) of the plaint is denied and the Plaintiff shall be put to strict proof thereof. In response the Defendant shall aver that it has never transferred any power bill from account number 11033099 to the Plaintiff's account number 200664023 as is alleged."

The question of whether the bill was transferred to the Plaintiff or to the Plaintiff's account is semantics. Whether it is called an account of the Plaintiff or the Plaintiff should not affect what is to be determined which is whether a bill was transferred to the Plaintiff, who only had one account, from Hotel Africana. It is clear from the testimony of DW1 and DW2 that the Defendant treated the sum of Uganda shillings 64,000,000/= communicated to the Defendant by the general manager of Hotel Africana as an amount to be taken as the liability of the Plaintiff. The exact amount that was included as the liability of the Plaintiff was however less than Uganda shillings 64,000,000/= and was included in the Plaintiffs undertaking exhibit D6 relied on by the Defendant. In paragraph 2 of the said undertaking PW1 wrote that Polla Plast (a factory) operates under account number 200664023 with UMEME Limited for the supply of electricity. In paragraph 3 he stated that the applicant is indebted to UMEME limited up to an amount of Uganda shillings 137,614,450/=. The undertaking was written on the 9th of May 2012. In the audit report agreed to by the Plaintiff and the Defendant it is written that the total bill as recorded by UMEME limited amounted to Uganda shillings 532,077,050/= while the Plaintiffs record showed the total Bill as Uganda shillings 419,948,083/= according to the summary of the Plaintiff's auditors Messieurs MOK Associates, Certified Public Accountants in which the difference of Uganda shillings 112,129,969/= comes about as a result of a bill transfer charge of Uganda shillings 60,482,777 on 30 March 2010 and fraud charges of Uganda shillings 51,575,373/= on 12 April 2010. It was also agreed that meter number E201278 which belonged to BMK industries was given to

Polla Plast when opening its account and was used up to November 2010. The page of the audit in which this information is agreed is signed by the representatives of both parties on 31 October 2014.

The letter of Hotel Africana Ltd wherein they request to transfer an amount of Uganda shillings 64,000,000/= is dated Tuesday, February 09, 2010 (exhibit P5) and is close to the date of 30th of March 2010 wherein it is agreed that a bill transfer charge of Uganda shillings 60,482,777/= was made on 30 March 2010. What is even more specific is that in exhibit P5 there are handwritten notes from an UMEME Limited official in which it is written as follows:

"Please transfer the attached bill to a/c 200664023 and return now."

In exhibit P6 the account statement of the Plaintiff account number 200664023 Polla Plast shows that on 30 March 2010 there was a bill transfer of 60,482,777/=. There are three other bill transfers of Uganda shillings 23,600/= each on the same day amounting to Uganda shillings 70,800/=. In total this amounts to Uganda shillings 60,553,577/=. Soon thereafter and on 12 April 2010 there is a fraud charge of Uganda shillings 51,575,373.68. The same information is found at page 5 of the joint audit report which clearly shows that there was a bill transfer of 60,482,777/= on 30 March 2010. There are three other bill transfers of Uganda shillings 23,600/= each.

The Defendant denied that there was a bill transfer to the Plaintiff's account as alleged. I can only make inferences about the motive for this denial after considering other evidence. Exhibit P6 proves that there was such a transfer. In paragraph 3 of the amended plaint the Plaintiff seeks a declaration that he is not liable to pay power bills of Uganda shillings 60,482,777/=. The Plaintiff's case in the plaint inter alia is that it received a letter that the electricity bill of Hotel Africana of Uganda shillings 64,000,000/= is to be transferred to its account. However the Plaintiff averred that it was the account of BMK industries account number 100192145 that it inherited and had transferred to Polla Plast and not that of Hotel Africana which had account number 110933009.

Finally I have considered the evidence of the account of the Plaintiff according to the exhibits tendered in court. Exhibit P4 is a tax invoice from UMEME limited in

which BMK industries was billed under its account number 100192145 on 7 October 2008. The meter number thereof is E 201278. The Plaintiff further adduced in evidence exhibit P 37 which is another tax invoice to Polla Plast. This document was put to DW1 Agnes Nalwanga who testified in cross examination that the meter number was the same as that of BMK industries. Exhibit P 37 which the tax invoices of the Defendant shows that the meter number is E201278 and the account number is 200664023. It is dated 12th of March 2009. It proves that the meter of BMK industries had been transferred to Polla Plast by the year 2009. Secondly the Plaintiff had been given to account number 200664023. According to PW1 the Plaintiff had utilised the account of BMK industries for about five months before the transfer. I believe this testimony is consistent with the evidence adduced in the trial as well as the audit of the parties and is the truth. Subsequently another account of Hotel Africana Ltd which had a bill with an outstanding amount was transferred into the Plaintiff's account 200664023, formerly belonging to BMK Industries, according to exhibit P6 which is the account statement and also in the audit report. In the premises the Plaintiff has proved that the bill of Hotel Africana had been transferred to its account. Secondly the transfer was without the consent of the Plaintiff. Thirdly this amount was used to increase the Plaintiff's liability to the Defendant and was partly the basis for disconnection of power to the Plaintiff and the subsequent undertaking of the Plaintiff exhibit D6.

As far as issue number two is concerned as to whether the Defendant illegally and unlawfully transferred the bill of Uganda shillings 60,482,777/= to the Plaintiff, the transfer was made on the request of Hotel Africana according to their letter exhibit P5. Secondly the request was based on a forged letter exhibit D8 (Formerly DID1) attributed to PW1 the managing director of the Plaintiff. Because the basis of the transfer was not with the consent of the Plaintiff, it was unlawful. This is coupled with the fact that the Plaintiff had already taken over the account of BMK industries at the time of the transfer of the electricity bill of Hotel Africana. The evidence is explicit that Hotel Africana shared a warehouse where it had laundry services with the Plaintiff and contributed to the Plaintiff some amounts of money on a monthly basis as a contribution for payment of the electricity bill of the Plaintiff. The amount of money contributed by Hotel Africana is reflected in the correspondence exhibit P8 in which they agreed that a fair monthly estimate of the contribution to the

electricity Bill was Uganda shillings 400,000/= per month from September 2008 to September 2010, a period of two years. In exhibit P13 which is another letter from Hotel Africana addressed to the managing director of Polla Plast/the Plaintiff dated Friday, December 16, 2011, the amount of money from September 2008 to September 2011 was the subject matter of the letter. This is a period of three years. Secondly the managing director of Hotel Africana Ltd repeated that the monthly contribution was an average of Uganda shillings 400,000/= towards the payment of electricity Bill is and when calculated on the basis of 24 months period, it amounted to Uganda shillings 9,600,000/=. It is further established that the Plaintiff was paying on account number 200664023 which it had inherited from BMK Industries. It is within this period that Hotel Africana Ltd wrote exhibit P5 on 9 February 2010 addressed to the Area Manager, Banda area, UMEME Limited in which they sought to transfer the outstanding bill of Hotel Africana Ltd on account number 110933009 to Polla Plast Ltd and the amount of the outstanding bill was estimated by them to be Uganda shillings 64 million. Hotel Africana Ltd wrote as follows:

> "It is over 15 (15) months now, since October 2008 when Polla Plast Ltd and Hotel Africana requested, that the caption UMEME customer account number 110933009 with an outstanding balance of Uganda shillings 64 million be transferred into Polla Plast Ltd's name, who have utilised and are responsible for the accumulation of the above electricity Bill".

Lastly the agreements by which Polla Plast came to occupy the premises were between Polla Plast and BMK Industries. These agreements are exhibits P2 and P3. Hotel Africana Ltd is a limited liability company and was not privy to the arrangement between Polla Plast and BMK Industries.

In the premises issue number two as to whether the Defendant unlawfully transferred the Bill of Uganda shillings 60,482,777/= to the Plaintiff is resolved as follows. The Defendant on the basis of exhibit D8 (formerly DID1) which was not executed by the Plaintiff or any person proved in evidence and a letter of Hotel Africana exhibit P5 dated 9th of February 2010 without the knowledge of the Plaintiff agreed to transfer the bill of Hotel Africana Ltd above-mentioned to the Plaintiff. The transfer is not binding on the Plaintiff and to that extent the transfer of the bill was unlawful and without consent of the Plaintiff. Furthermore there is

no evidence whatsoever that the Plaintiff also consumed electricity leading to the said amount. Issue number two is resolved in favour of the Plaintiff.

This leaves pending the issue of the undertaking executed by the Plaintiff and which was tendered in evidence as exhibit D6 executed on the 9th of May 2012. It was an undertaking by the managing director of the Plaintiff in a document drawn by Kampala Associated Advocates. Both Counsels quoted my decision in HCMA No. 235 of 2013 (arising from HCCS No 277 of 2012) Esther Nakulima vs. Ann Nandawula Kabali wherein I quoted from Osborn's Concise Law Dictionary 11th edition at page 156 for the definition of 'duress' that:

> "In civil law the unlawful pressure to perform an act. It may render the act void or voidable."

I held that from the definition the word "duress" has to be unlawful pressure. Secondly what is unlawful required clarification and may depend on the facts of the case. My conclusion was that lawful force cannot amount to "duress" such as in the use of force to execute a court order. It was necessary to rely on the ground of duress to prove that unlawful pressure was exerted and led to loss of his or her free will. According to the Defendant's Counsel, the Defendant applied lawful pressure. To amount to duress, the pressure must be unlawful, illegal or not permitted by law. He submitted that by relying on several authorities that the victim had to protest at the time of the demand and whether the victim regarded the transaction closed or whether he intended or tried to repudiate the agreement procured by the alleged duress.

In rejoinder the Plaintiff's Counsel relied on exhibit P 20 alleging that there was irregular billing. He further submitted after reference to several other authorities that the decision of this court was quoted out of context. The submissions of the parties have been detailed above and not need to be repeated.

I have duly considered the evidence and particularly the testimony of PW1 and PW3. PW3 had been arrested at the offices of the Defendant. The Plaintiff was going to be disconnected when he was disputing the bill. In a bid to save his business and be able to fulfil his business obligations, he signed the undertaking. The undertaking exhibit D6 was executed under circumstances in which the

Plaintiff's managing director Mr E Makubuya could only exercise limited choice. He could not conduct his business of manufacturing plastic products without electricity. He could not make money to fulfil his monetary obligations without manufacturing plastic products. He was afraid of being sued for failure to fulfil his orders. Did he sign the document under his own free will? According to **Words and Phrases Legally Defined 3rd Edition volume** 2 Lord Scarman Held in **Pao On vs. Lau [1979] 3 All ER 65** at 78 that:

> "Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. ... There must be present some factor 'which could in law be regarded as a coercion of his will so as to vitiate his consent'. ... In determining whether there was a coercion of will such that there was no true consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are ... in determining whether he acted voluntarily or not."

The above definition summarises the authorities relied upon by the Defendants Counsel as well as the Plaintiff's Counsel in their written submissions. Suffice it to quote from an illustration of the principle in Stroud's Judicial Dictionary of Words and Phrases 2000 edition from North Ocean Shipping Co. v. Hyundai Construction Co., The "Atlantic Baron" [1979] 1 Lloyd's Rep. 89 is that:

> "The threat by the builders of a ship to terminate the contract with the owners unless an extra 10 per cent on the price was agreed was "economic duress", and the agreement by the owners to pay the extra was a contract made under "duress", and therefore voidable (North Ocean Shipping Co. v. Hyundai Construction Co., The "Atlantic Baron" [1979] 1 Lloyd's Rep. 89"

I read the same case from the citation of **North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd and another The Atlantic Baron [1978] 3 All ER 1170** MOCATTA J at 1182 said:

> "Secondly, from this it follows that the compulsion may take the form of 'economic duress' if the necessary facts are proved. A threat to break a contract may amount to such 'economic duress'. Thirdly, if there has been such a form of duress leading to a contract for consideration, I think that contract is a voidable one which can be avoided and the excess money paid under it recovered."

The evidence clearly showed that the Plaintiff did not have an alternative course open to him in the face of disconnection. He had to make money or sink. If he did not sign the undertaking, power would be disconnected and he would be unable to fulfil the Plaintiff's obligations to the Defendant and other persons. To make matters worse, the bill he was undertaking to pay included a transferred bill of over 60,000,000/= as well as a penalty of over Uganda shillings 51 million. Subsequent correspondence shows that the Plaintiff protested the bill which he was undertaking to pay. In exhibit P 19 the Plaintiff wrote on 25 January 2012 protesting in paragraph 7 of the letter a default bill of Uganda shillings 51,575,373/=. The Plaintiffs suit was filed on 8 November 2012 protesting the transferred bill of Uganda shillings 60,452,777/= as well as unlawful charging 51,575,373.68 Uganda shillings. The bill transfer of 60,452,777/= was based on a document relied on by the Defendant as the Plaintiff's document when the Plaintiff had not executed it. Inasmuch as the pressure applied on the Plaintiff included the colossal sums of money he was being pressured to pay, a substantial portion of the bill consisted of 60,452,777/= as well as 51,575,373/= Uganda shillings which was unlawful according to resolution of the next issue. The total Bill based on the two items amount to Uganda shillings 112,028,150/=. In paragraph 3 of the undertaking exhibit D6 it is written that the account of the Plaintiff was indebted to the Defendant in the tune of Uganda shillings 137,614,450/=. If one subtracts 112,028,150/= from the said amount, one gets only Uganda shillings 25,586,300/= which is what the Plaintiff could have paid notwithstanding the complaint about the issue of faulty meters.

The above factors were strong enough to affect the free will of the Plaintiff in signing the undertaking. The factors outlined above vitiated the will of the Plaintiff's managing director. Moreover his staff had also been arrested and there was a threat to take further action against him as well as the threat of suffering economic

damages by failure to produce. The undertaking exhibit D6 was signed under extreme economic duress as defined above. It was not lawful for the Plaintiff to be fined without due process of law. The general conclusion is that the undertaking signed by the Defendant is voidable. And the Plaintiff having challenged it on the ground of economic duress and other threats which appear in the evidence, the undertaking is hereby avoided.

On the question of whether the Defendant irregularly and unlawfully fined the Plaintiff in respect of the imposed fraud charge of Uganda shillings 51,575,373/=?

The Plaintiff's testimony is contained in paragraph 15 of the written testimony that the Defendant alleged from Sunday, April 11, 2010 commanded April 12, 2010 that he was liable for a fraud charge levied on his account arising from an alleged energy loss to the tune of Uganda shillings 51,575,373/= according to Plaintiffs exhibit P6. He testified that he never occasioned any energy loss as alleged to warrant the payment of the exorbitant, extortionist and unjustified penalty. Exhibit P6 is the account statement of Polla Plast for account number 20066 4023. The narrative on 12 April 2010 and the invoice number 202328792 shows that there was fraud charge of Uganda shillings 51,575,373.68.

The testimony on the matter is that of Joyce Nanziri DW1. In her written testimony, she testified that the Plaintiff's power supply was on several occasions disconnected for his refusal to pay outstanding electricity bills based on his actual consumption and that on several occasions the Plaintiff was found to have reconnected his power supply without the consent of the Defendant and without paying the outstanding electricity according to exhibit D4. Exhibit D4 is a disconnection order dated 11th of October 2012. The disconnection was due to outstanding bills and self reconnection. However the statement of the Plaintiff's account exhibit P6 demonstrates that the Plaintiff was charged on 12 April 2010. DW1 further testified that the Plaintiff's acts of reconnection and failure to pay his outstanding electricity bill were unlawful and illegal and a complaint was made to the police in 2012 and the Plaintiff was prosecuted. That the Defendant company due to the Plaintiff's fraudulent acts of reconnecting itself and power supply and bypassing the meter imposed a fraud charge on the Plaintiff of Uganda shillings 51,475,373/= according to exhibit D3 and D2. Exhibit D2 is a letter dated 20th of January 2012 from the

district manager Banda responding to the Plaintiffs complaint of 14th January 2012. As far as the issue is concerned he wrote as follows:

> "Unfortunately, the bill charged of Uganda shillings 51,575,373/= due to energy we recovered for the months of March to May 2010 cannot be waived."

Exhibit D3 is a document entitled energy loss on account number 200664023. It is written as follows:

> "In respect of consumer notice/disconnection/order number 102328792/104094 issued to you for consumption from Sunday, April 10, 2010 Monday, April 12, 2010."

This is a period of three days. A levy of Uganda shillings 1,000,000/= was entitled fraud fine. “Energy blocks” usage 130773 of Uganda shillings 42,687,943 and VAT of Uganda shillings 7,807,429 as well as service charge of 20,000/= was levied leading to a total of Uganda shillings 51,575,373/=. DW1 was cross examined on the fraud charge according to Plaintiffs exhibit P7 which is the same as exhibit D3. She testified that she could not explain how the 42 million was arrived at. She further testified that it was not possible to consume Uganda shillings 51 million in one day.

The testimony of DW2 Agnes Nalwanga on the issue is in paragraph 9 of her written testimony where she wrote that:

> "The Defendant company due to the Plaintiff’s fraudulent acts of reconnecting itself upon supply and bypassing the meter imposed a fraud charge on the Plaintiff of Uganda shillings 51,575,373/= in line with the laws governing the relationship between the Plaintiff and the Defendant (exhibit D3 and D2)"

The testimony of DW2 is the same as that of DW1. The document exhibit P7 speaks for itself. The fraud charge was Uganda shillings 1,000,000/=. Secondly the amount of Uganda shillings 42,687,943/= was supposed to be for consumption of electricity for the period 10 April 2010 to 12 April 2010, a period of approximately 3 days.

The Plaintiff's Counsel submitted that the Defendant did not follow the procedures in levying fraud charges under Regulation 26 and 27 of the Electricity (Quality of Service Code) Regulations, 2003.

On the other hand the Defendant's Counsel submitted that the evidence of DW1 and DW2 was that the Plaintiff on several occasions was found upon disconnection to have connected himself. Secondly it was a criminal offence and a complaint was made to the police under CRB1744/2012. Thirdly regulation 15.5.1 of the Electricity (Primary Grid Code) Regulations 2003 permits the Defendant to disconnect power at the consumer's premises immediately where power is accessed in a manner other than that provided for by the regulations. Finally the Plaintiff was disconnected for two main reasons namely unpaid outstanding bills and self reconnection. Secondly the fraud charge arose from consumption for three months namely March, April and May 2010.

I have carefully considered the evidence and the defence exhibit D3 speaks for itself. The period for the charge was 10th of April 2010 and 12th of 2010. The same document was relied upon by the Plaintiff in exhibit P7. DW1 agreed that the Plaintiff could not have consumed about 51 million for the period. The narration in the statement of account of the Plaintiff exhibit P6 clearly shows that there was a fraud charge. The evidence establishes that the fraud charge was only Uganda shillings 1,000,000/= and not shillings 51,575,373/= as contained in exhibit P6.

None of the parties relied on a law which authorised the Defendant to impose penalties. Before proceeding to consider the law, the Defendants Counsel relied on regulation 15.5.1 of the Electricity (Primary Grid Code) Regulations, 2003 for the right of the Defendant to disconnect power. Regulation 15.5.1 indeed allows the Defendant to disconnect supply to the consumers supply address immediately where the consumer has obtained the supply of electricity and the supply at the supply address otherwise than in accordance with the Code. There is no sufficient evidence to prove that the Plaintiff obtained a supply of electricity to the address otherwise than in accordance with the Code. Secondly disconnection is not permitted under regulation 15.6.1 (b) of the Electricity (Primary Grid Code) Regulations, 2003 where the consumer has failed to pay an amount of the bill which

does not relate to the standing service fee, the electricity uses charge, capacity charge, or charges for other services rendered by the licensee.

The transferred the bill of over 60,000,000/= was not the Plaintiff's bill. As far as the fraud charge of 51 million is concerned, there is no submission by the Defendant's Counsel on the law applicable. I have considered the Electricity (Primary Grid Code) Regulations, 2003 and particularly regulation 7.6 which deals with illegal use. The remedies of the Defendant are provided for under regulation 7.6.1. It is provided that where a consumer has obtained the supply otherwise than as permitted by the code, the Defendant may estimate the use for which the consumer has not paid; take debt recovery action for the unpaid amount; take action in accordance with part 15.02 to disconnect supply to the consumer's premises. It is nowhere provided that the Defendant can charge a penalty. Moreover the Defendant submitted that the Plaintiff was reported to the police. No evidence of the proceeding in a court of law in which the Plaintiff has been convicted of an offence has been adduced in evidence. Finally the Defendants own witnesses DW1 particularly testified in cross examination that the amount of the fraud charge could not have been the amount consumed (within three days) contained in exhibit P7 or exhibit D3. Between exhibit P 20 and exhibit D3, the court will go with the instrument imposing the charge and not exhibit P 20 which responds that it was a charge of electricity for three months. On the balance of probabilities the Plaintiff has proved that the charge of Uganda shillings 51,575,373/= imposed by the Plaintiff on 12 April 2010 is unlawful. Secondly a penalty can only be imposed by a statutory power and to impose a fine without authority is illegal and a nullity. In the premises issue number three is resolved in favour of the Plaintiff and the Defendant irregularly and unlawfully fined the Plaintiff in respect to the imposed fraud charge of Uganda shillings 51,575,373.68.

Whether the Defendant irregularly billed the Plaintiff in respect of the faulty meters?

Faulty meters:

I have carefully considered the evidence in relation to faulty meters. The Plaintiff proved that its meters were changed several times. However it cannot be established whether it led to an inflated bill or not. No expert opinion was sought

on the matter and the court cannot reach a conclusion about the question of whether the faulty meters led to the inflation of the Plaintiff's s electricity power bills. The Plaintiff's Counsel submitted that the Defendant installed two faulty meters on two separate occasions. Secondly the transformer feeding the Plaintiffs facility also supplied three other factories. He concluded that according to exhibit P 19 the transformer was 500 KVA but according to exhibit P 20 the Plaintiff was consuming 524 KVA leaving the other factories with the balance of 76 KVA which was impossible. He submitted that the meters were faulty because one of them displayed 524 KVA ,way above the capacity of the transformer and therefore the Plaintiff's electricity bills unreasonably shot up from September 2011 to August 2012. Counsel submitted that under regulation 7.1.1 (B) the Defendant owed a duty to the Plaintiff to install and maintain standard metering and ancillary equipment. Under regulation 12 .3.2 of the Electricity (Primary Grid Code) Regulations, 2003 where the licensee is unable to base the Bill on the meter reading, it will be based on an estimate grounded on past consumption. The testimony of PW3 is that the average electricity Bill was worth about Uganda shillings 6,000,000/= per month.

In reply the defence Counsel submitted on behalf of the Defendant that the Defendant had to maintain a standard type of meters approved by the authority. The meters had to be changed firstly because the batteries were **old** and secondly because a new metering system had been rolled out. As far as the capacity of the transformer showing 524 KVA is concerned, the capacity could go up as high as 600 KVA. In the premises the Plaintiff was billed on proper meters and those which had faulted were replaced for the sole purpose of maintaining proper billing as mandated by the law.

The issue of faulty meters is contained in exhibit P 19 and exhibit P 20. In exhibit P 20 the Defendant's district manager Banda wrote to the managing director of Polla Plast account number 200664023 on the issue of inconsistencies in meter readings on the said account. His conclusion was that the meter had been read correctly and on a monthly basis. First of all he wrote that meter number E24 3296 was removed when the battery became old. Secondly it was replaced by meter number UM 30044 when they rolled out an automated meter reading project. Thereafter meter number U 3280 was installed on 2 December 2011 when the previous meter faulted. What is crucial is that the amount involved concerned the Months of

November and December 2011 being Uganda shillings 24,503,990/= and Uganda shillings 14,407,795/= respectively.

In response thereto the Plaintiffs managing director confirms in exhibit P 19 the amounts in question as derived from alleged "faulty meters". The Electricity (Quality of Service Code) Regulations, 2003 statutory instrument 2003 number 21 makes provision for the testing of meter readings at the request of the consumer under regulation 27 thereof. Where the meter is found to be more than nominally defective being or having a deviation of work done 2.0% from accurate registration, it is to be adjusted under regulation 28. The licensee is required to correct previous pleadings consistent with the inaccuracy found in the meter for the period the last test of the meter was conducted. If the meter does not register for a period of time, the customer would be charged according to consumption rates in previous periods by the same consumer at the same location.

In this case no technical data was availed. Exhibit P 20 responds that the meter had been read correctly and on a monthly basis. In the absence of a technical opinion about the meter reading, the question of a faulty meter cannot necessarily lead to the conclusion that it caused a deviation of more than 2.0% either in the negative or in the positive. In the circumstances, the Plaintiff has not proved a case for reduction of the amount charged.

In the premises issue number 4 of whether the Defendant irregularly and unlawfully billed the Plaintiff in respect of faulty meter readings is resolved in favour of the Defendant.

Whether the Defendant is liable for the loss of the Plaintiff's machines and business?

On this issue the Plaintiff's Counsel submitted that electricity was a major factor in running the business of the Plaintiff. He relied on the doctrine of undue duress exerted on the Plaintiff. Despite the colossal sums of money that was being demanded from the Plaintiff, the Defendant wrote to the landlord of the Plaintiff to withhold his property for non-payment of the outstanding electricity Bill according to Plaintiffs exhibit P 23. Counsel further made reference to the procedure of dealing with defaulting clients and submitted that the matter ought to have been

taken to the court. He concluded that the loss of the Plaintiff's factory machines and the entire business of the Plaintiff can be attributed to the unprofessional way in which the Defendant conducted the affairs of the electricity bills of the Plaintiff.

In reply the Defendant's Counsel submitted that the Plaintiff's machines were sold pursuant to a court order in a suit which the Plaintiff's landlord instituted against the Plaintiff. The allegation that pursuant to Exhibit 23 the landlord withheld the property has no substance and should not be acted upon by the court. He submitted that the sale was under a court order and there was no connection to the Defendant.

I have carefully considered the question of the loss of the Plaintiff's business. The loss was generated by failure by the Plaintiff to run its business owing to having no electricity. The factors leading to loss of electricity was the disconnection. However the disconnection of the Plaintiff was based on a transferred bill of Hotel Africana as well as the fraud charge of over Uganda shillings 51 million. Having resolved the two issues of whether the Defendant illegally and unlawfully transferred the bill of Uganda shillings 60,482,777/= to the Plaintiff? And whether the Defendant irregularly and unlawfully fined the Plaintiff in respect of the imposed fraud charge of Uganda shillings 51,575,373/= in favour of the Plaintiff, the inevitable conclusion is that the Plaintiff's business should not have been disconnected from supply of electricity on those grounds.

Inasmuch as the Defendant has powers to disconnect power, the basis for the disconnection was unlawful. I have duly considered the provisions of the Electricity (Primary Grid Code) Regulations, 2003 and particularly regulation 7.6 on illegal use. The option of the Defendant on the basis of its allegation that the Plaintiff was illegally using the power was to estimate the usage for which the consumer had not paid and secondly to take a 'debt recovery' action for the unpaid amount or to take action in accordance with part 15.0 to disconnect supply to the consumer's premises.

With reference to disconnection of power which is the option the Defendant could have exercised, regulation 12.4.3 provides that where a licensee undercharges the consumer as a result of the consumer's fraud or use of electricity otherwise than in accordance with the code, the licensee may take action in accordance with clause

7.6 of the code. The evidence however shows that it was not the consumer who was responsible for the bill. The consumer was charged a bill of another customer. The charge was based on a document purportedly written by the Plaintiff but which was not even on the Plaintiff's letterhead and had a different address. It was purportedly signed by the Plaintiff's managing director (exhibited D8) but the managing director disputed the signature and was able to show while on the witness stand as PW1 that the signature was not his. In any case under regulation 13.6.3, a consumer remains responsible for paying for electricity supplied on the premises after vacating the premises (i.e. Hotel Africana Ltd or BMK Industries).

Whereas a licensee may disconnect electricity for failure to pay by a consumer under regulation 15.1.1, disconnection is not permitted under regulation 15.6 where a consumer has made a complaint related to failure to pay amount of the bill which does not relate to the standing service fee, electricity usage charge, capacity charge or charges for other services rendered by the licensee. The transferred bill did not relate to any of the above categories. Secondly the fraud charge was unjustified and unlawful according to the finding of the court on the issue.

Last but not least the Electricity Act 1999 chapter 145 on supply of electricity and section 79 thereof gives a consumer of electricity a right to be supplied by the licensee of the Authority. Secondly the licensee may seek to recover outstanding dues by civil action.

Even though BMK Industries is not a party to this action, and the question of whether it evicted the Plaintiff is not the subject matter of this action, PW1 testified that he lost all his machines. The fact that he lost the machines to the landlord is not very material in considering whether the loss occurred as a result of loss of electricity. PW3 made it abundantly clear that they were not able to operate as a business due to frequent disconnections. In other words the supply of electricity was directly responsible for the Plaintiff's productivity. The Plaintiff runs a factory and the only way in which it could produce any way was to operate the factory. Under section 77 of the Electricity Act 1999 cap 145 supply of electricity includes continuation of such supply under section 77 (5) of the Act. Under section 77 (8) of the Electricity Act 1999 Cap 145, where damage or loss is caused to the consumer by the negligence of the licensee in the exercise of powers conferred on the

licensee, the consumer is entitled to prompt payment of fair and adequate compensation by the licensee for the damage or loss sustained as a result of the exercise of those powers.

The licensee arbitrarily exercised powers it did not possess to fine the consumer according to exhibited D3. Offences and penalties as prescribed by section 81 of the Electricity, 1999 Act and needed to be prosecuted before an independent and impartial court or tribunal established by law under article 28 of the Constitution. Such a tribunal would give a fair hearing to both parties. The Plaintiff was able to prove that the transfer of a Bill of Uganda shillings 60,482,777/= was without his consent.

To make the situation even clearer, in the written statement of defence of the Defendant paragraph 9 thereof the Defendant averred that it never transferred any power bill from account number 11033099 to the Plaintiffs account number 207664023 as alleged. This prima facie was to show the Defendant as being innocent in the matter and the question is innocent of what? Exhibit P5 proves that Hotel Africana Ltd wrote to the Defendants Area Manager of Banda area for the transfer of an outstanding bill on account number 110933009 to the Plaintiff's only account with the Defendant.

The Defendant relied on exhibit D8 (formerly DID1) which purports to take responsibility for account number 110933009 when the document in issue was not written by the Plaintiff at all. The Defendant never called officials of Hotel Africana Ltd to clarify on the matter and the said Hotel Africana Ltd is not a party to this suit or even privy to the contract between the Plaintiff and BMK Industries exhibits P2 and P3. In the premises, the loss of the Plaintiffs business which included the attachment of its property for failure to pay rent is a direct consequence of the Defendant's actions in disconnecting the Plaintiff on grounds which had been successfully challenged in this suit. The Defendant is liable to compensate the Plaintiff for the loss of all his machines in the factory.

Remedies available:

1. The Plaintiff is entitled to the declaration sought that he is not liable to pay for the bill of Uganda shillings 60,482,777/=.

2. Secondly the Plaintiff is not entitled to the declaration that it is not liable to pay for bills based on faulty meters.
3. A declaration issues that the Plaintiff was unlawfully charged for causing energy loss and is not liable to pay the fraud charge of Uganda shillings 51,575,373.68.
4. The undertaking executed by the Plaintiff on the 9th of May 2012 is void for being issued under duress.

As far as the quantum of general damages is concerned, the principles thereof are found in the case of **Johnson and another v Agnew [1979] 1 All ER 883** wherein Lord Wilberforce at page 896 holds that the general principle for the assessment of general damages is:

> "compensatory, i.e. that the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed."

In the East African Court of Appeal case of **Dharamshi vs. Karsan [1974] 1 EA 41** it was held that the basic principle to be applied in a claim for general damages is the common law doctrine of *restitutio in integrum*. The Plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred. In **Halsbury's laws of England fourth edition reissue volume 12** (1) paragraph 812 general damages are defined as those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms. They are those damages which will be presumed to be the natural or probable consequence of the wrong complained of; with the result that the Plaintiff is required only to assert that such damage has been suffered.

The Plaintiff's Counsel prayed for compensation for the machines. He submitted that the value of the machines was US$ 2,110,950/=. According to exhibits P23 there was a request by the Defendant addressed to the Plaintiffs Land Lord for him to hold the property of the Plaintiff till payment of shillings 136,590,219/=. This request was specifically addressed to the Plaintiff's landlord addressed as "The Property Manager B.M.K Uganda Ltd, Karunak K. Muwanga (the proprietor thereof and MD of Hotel Africana Ltd). The fact that the property of the Plaintiff was eventually attached by court order in a separate suit brought by the Landlord

against the Plaintiff is not disputed. The Defendant apparently did not benefit from the attachment hence the counterclaim in this suit.

According to MeysConsult exhibit P33 in a report dated 26th of June and its certificate of value, the Plaintiffs factory assets were assessed at Uganda shillings 2,110,950,000/= at a fair market value with a forced sale value of Uganda shillings 1,266,570,000/=.

The Plaintiff's property was auctioned after a court order. The value of the auction is not in evidence.

In the premises it is improper for the court without having called Messrs MeysConsult to assess the value of the property of the Plaintiff for compensation. The valuation of the property for compensation is referred to arbitrators under section 27 of the Judicature Act to consider the MeysConsult Appraisal Report for Plastic Processing machinery as at June 2012. A valuation surveyor shall be appointed by the Electricity Disputes Tribunal according to their mandate to determine a dispute as to the amount of compensation payable under section 77 (10) of the Electricity, 1999 Act cap 145 in the absence of an agreement of the parties to the appointment.

The Plaintiff shall be paid general damages of 20% of the amount assessed by the Electricity Disputes Tribunal.

Lastly the counterclaim of the Defendant succeeds in the amount of Uganda shillings 25,586,300/= which is the difference when one subtracts Uganda shillings 112,028,150/= from the total amount claimed when the electricity was disconnected namely Uganda shillings 137,614,450/=.

The Plaintiff shall be paid interest at 20% per annum on the compensation amount as well as on the general damages from the date of this judgment till payment in full.

20% interest is payable on the counterclaim from the date of judgment till payment in full.

Costs of the suit shall be paid to the Plaintiff.

The costs of the counterclaim shall be paid to the Defendant.

Judgment delivered in open court on the 9th of February 2015 at 2.30 pm

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Joseph Anguria Counsel for the Plaintiff

Sam Gimanga Counsel for the Defendant

Plaintiff present in court

No Defendant's official in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

9 February 2015