

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)

CIVIL SUIT NO. 236 OF 2014

GLOBAL COMPANY (U) LIMITED..... PLAINTIFF

VERSUS

UMEME LIMITED..... DEFENDANT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

Brief Facts:

The Plaintiff Company is a customer of the Defendant Company. The Defendant installed metering devices and other necessary appurtenances at the Plaintiff's premises, to record the Plaintiff's electric energy consumption under Account No. 201177685, Meter No. U31252.

One Fredrick Ddamulira, an employee of the Defendant, while carrying out a 3phase meter audit opened the meter box at the Plaintiff's premises and discovered that the meter was under registering power.

Subsequently, the Defendant disconnected the power supply to the Plaintiff's premises on account of meter tampering; the meter was later removed and taken to the Defendant's meter testing laboratory for examination.

It is the Plaintiff's contention that it was not given a fair hearing before the disconnection was effected and that the action resulted into the Plaintiff suffering loss and hence this suit for special and general damages together with costs of the suit.

In its written statement of defence, the Defendant denies the allegations made by the Plaintiff stating that the power supply was lawfully disconnected after it was discovered that the Plaintiff was involved in meter tampering, thereby obtaining power supply illegally. It was prayed that the suit be dismissed with costs.

It is worth noting at this stage that another meter was installed in the Plaintiff's premises on the orders of court, during the course of hearing the suit.

Three issues were framed for determination by court:-

- 5 **1) Whether the Plaintiff illegally obtained supply of electricity.**
- 2) Whether the disconnection of the Plaintiff's power supply was lawful and**
- 3) What remedies if any, are available to the parties.**

The Plaintiff called two witnesses who filed witness statements, while the Defendant called four witnesses who testified orally.

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Issues one and two will be resolved together.

Illegality of power supply and whether disconnection was lawful.

PW₁ Kayiwa Stephen testified that the Defendant's agents, without any lawful justification
15 disconnected the Plaintiff's power supply on 23.10.13- Annexure B. Later the Defendant issued a report alleging that the Plaintiff had admitted fraud as indicated in a report – Annexure "C", the Plaintiff's letter Annexure "D" and the adjusted fraud Bill – Annexure "E".

That when the power was disconnected on the said date, the reason advanced by the Defendant
20 was that the meter was suspected of not performing well. The meter was taken for testing and the feedback given to the Plaintiff was that the meter was under registering.

According to the Defendant's report, all the factor seals on the meter were intact, but that since the meter was under registering, the Plaintiff had to pay the sums of money the Defendant came
25 up with as a penalty.

Annexure "C" the Defendant's report indicates that the reason for removal of the meter was **"suspected tampered meter"**. The report was made later after the meter had been removed. Based on the report, detailed tests on the internal visual examination signal central from the rector pause were carried out. One part of the current transfer core was found removed from
30 all the current transformers. The conclusion in general remarks was that, the meter had been tampered with and it was recommended for scrapping.

The Plaintiff wrote to the Defendant after the meter had been removed requesting for another meter so that they could have power supply. The Defendant refused the request as it was
35 addressed to the Electricity Regulatory Authority (ERA) which promised to convene a

consensus meeting between the Plaintiff and Defendant. Exhibit “D” is a letter dated 29.10.13, addressed by ERA to Umeme asking them to find a solution to the issue. The Defendant responded on 30.10.13, stating that the fraud bill had been adjusted and the Plaintiff should pay.

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The Plaintiff was invited to give a convenient date to arrange the re-test of the meter, which had been taken to an unknown place. Referring to the meter query No. 31909 dated 23.10.13 – Annexure “E”, PW₁ stated that he did not know where the Umeme workshop is although he is made to understand that it is at Lugogo, where the meter was taken for internal examination and the Plaintiff was informed that the meter is outside the perimeter wall of the Plaintiff’s premises.

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The following documents were tendered as Exhibits: Exhibit P₁ – Annexure A – Bills, Exhibit P₂ of 23.10.13 – disconnection order/meter query; Exhibit P₃ – Annexure C – letter from Defendant dated 29.10.13, Exhibit P₄ – letter from Defendant to Plaintiff – Annexure D, Exhibit P₅ – letter dated 30.10.13 to the Plaintiff from District Manager, Umeme – Annexure E, Exhibit P₆ – sales invoices – Annexure F and Exhibit P_{7A} – P_{7G} - financial statements from 2011 – 2014.

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Denying any wrong doing on the part of the Plaintiff in respect of the meter, PW₁ asserted that, prior to the disconnection, the subject of this suit, the Plaintiff had ever been disconnected for purposes of testing the meter but no feedback was ever given. The testing was done in 2012.

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PW₂ Bashir Lweese confirmed that the Plaintiff’s power supply was disconnected without lawful justification, as the Plaintiff was never involved in any fraudulent dealings.

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Referring to the report issued by the Defendant – Exhibit P₂, he pointed out that it indicates the reasons for disconnection was meter testing. But no faulty seals were found when general tests were done – Exhibit P₃. The meter was under registering by 41.03% and only registered 58.2% of the total energy consumed. That is why the Defendant concluded that the meter was tampered with.

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Yet, the meters are owed by the Defendant. They are kept outside the Plaintiff’s premises in a box that is locked by the Defendant’s officers. They are checked and sealed by the same officers. The Plaintiff did not have keys to the meter boxes and never received any reports

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concerning the efficiency of the meters. The day the meter was removed; the Defendant's officers came with the keys, opened and removed the meter. The Plaintiff only signed to acknowledge that the meter had been taken for testing.

- 5 Therefore that, if the meter was tampered with, it could have been by the Defendant. And while the meter was tested by UNBS, the findings of UNBS are not in the report.

DW₁, Tusiime Robert is a metering Technician, who ensures that meters are tested and are accurate before they are installed and ensures that they remain accurate for their life time. He testified that, before he joined the meter testing laboratory, he found a record indicating that the meter in the names of the Plaintiff had been brought to the laboratory for testing on 24.04.13. It was found okay and sent back to the field at the Plaintiff's sight for re-installation. A report Exhibit D₁ was prepared.

- 15 The same meter was taken back for re-testing by Ddamulira Fredrick, the Technician at Banda. He carried out required tests as approved by the Electricity Regulatory Authority (ERA) by looking at the physical state of the meter; that is the seals, terminals and the body. The continuity test that determines if the meter is able to pass on power to the customer was done and it was okay. The functional tests that is checking the meter display, display button, rate of pulsing output and the programmed parameters was also done, and it was found that the meter was pulsing slower than normal.

Accuracy tests to determine whether the meter was registering exactly what the customer uses was done, and it was found that the meter was under registering by 41.8%.

- 25 Inter visual test: opening the meter and checking for nay foreign objects or removed objects revealed that the signal cables for the yellow phase had been cut, and that one part of the current transfer powers had been removed from all the three current transfers.

- 30 It was based on the above findings that it was concluded that the meter had been tampered with. The report ID₁ was prepared and the witness signed it. The Plaintiff who was not satisfied with the findings requested for a retest by UNBS. Accuracy tests were carried out by UNBS and still the meter failed.

However, the witness clarified that he did not participate in the first testing of the meter and therefore could not confirm if the first report – Exhibit D₁ was ever availed to the Plaintiff.

He added that, a meter remains the property of the Defendant Company and customers can access the meters at their premises. But that, the meters are always locked in a box and the keys kept at the Defendant's offices. Unless the customer breaks the meter box or gets other keys, they cannot access the meter. But he did not know if the Plaintiff could have broken into the meter.

The time between the first report and the second bringing of the meter by Ddamulira was approximately six months.

The seals of the meter had been tampered with but the witness could not tell who did so. On the other hand, he contended that there was no possibility if a third party having tampered with the seals, other than the Plaintiff.

While time affects meter accuracy after ten years of usage, by the time the testing of meter in question was done, it had been in use for only two years. It had been manufactured in 2011.

Further that, fluctuations in power do not affect the meter, but a power surge affects it. The machines used to test the meter are the same at Umeme and UNBS.

Meter tests are carried out using computerized machines for accuracy, since the machines have a standard meter. The specimen meter is connected to the machines and both are supplied with the same power load for some time and it is expected that the same units will be registered. That is what was done in this case. A copy of the report is not availed to the customer, except that the District Manager is supposed to invite the customer to attend the meter testing.

DW₂ Fredrick Ddamulira is an anomaly Technician with the Defendant Company. He is responsible for installation and conducting of Umeme meter. He has worked for the Company for twelve years.

He testified that on 23.10.13, while carrying out three phase meter audits in Kireka area, he went to the premises of the Plaintiff and asked the Askari for the person responsible. The electrician was called.

The witness told the electrician that he had come to do a meter audit. He then went and opened the meter box and on doing the audit discovered that one of the 3phases was not registering power. He explained that to the electrician who was witnessing the audit and then called the
5 Director of the Company and explained to him that the meter had a problem.

He also called his supervisor who advised him to properly explain the problem to the customer, which he says he did, before taking the meter to the central meter test workshop at Lugogo. He left behind a meter query form Exhibit D₂ which was signed by the customer, disconnected
10 the power and took the meter to the workshop.

The witness confirmed that the keys for the meters are kept at a key cabinet at Banda District Office and that the customer is never given copies of the keys. That at the client's premises, the meter is placed outside the premises near the electricity pole as that was the position in
15 October 2013.

Also that at the time they went to inspect the meters at the Plaintiff's premises, there was a padlock there that seemed to be intact, and there was no sign of any breakage of the meter.

20 The Managing Director of the Plaintiff Company came later after the problem with the meter had been discovered. He signed the meter query form but showed no interest in going with the witness to Lugogo when asked to do so.

There was no witness when the meter was being handed over to the workshop technician.

25 DW₃ Kirinya Charles is an electrician at the metering laboratory. He testified that in 2012, the metering Engineers from Banda brought a meter to the workshop which he tested and made a report. He has a copy of the said report. When he tested the meter, he found it to have a relay switch inside which was foreign and it used to switch the meter on and off remotely, yet is not
30 part of the meter.

The meter had no seal, meaning that anyone could interfere with the inner parts. The report is dated 12.07.12 – ID₂ and has the name and signature of the witness.

DW₄ Joyce Nanziri is the former District Manger of Banda. She testified that she received a call from the Umeme Technician Ddamulira Fredrick, informing her that he had audited the Plaintiff's meter and it seemed to have a problem. She advised him to take the meter to the meter laboratory at Lugogo to confirm the problem after engaging the users, that is, explaining to them the problem and telling them where he was taking the meter to confirm the accuracy.

The meter was accordingly taken to the laboratory, tested and it was confirmed that it had a problem as per the report issued.

She further informed court that records of clients are kept at the District and when the Technician called her, she looked at the customer's statement; she noted that in 2012, the Plaintiff had been billed for fraud. The meter had therefore to be removed immediately as it had been tampered with. The money for the fraud had been paid although there was no record of the fraud bill on the file.

After the meter was tested, there was an engagement with the Plaintiff. The Plaintiff contested the charges and was informed that the test could be re-done in its presence. By the time the witness left Banda, the re-test had not been done as it was being arranged by UNBS, Umeme and the Plaintiff's Manager. She referred to a letter Exhibit D₃ dated 29.10.13, from the Plaintiff contesting the report.

The Defendant responded to the Plaintiff's Exhibit D₄ stating that the retest could be done on a day convenient to the Plaintiff and they could make appointment with the laboratory Technician.

The Bill was adjusted from Shs. 108,400,000/- to Shs. 89,335,071/- as there was an error in computation arising out of a double charge.

It was submitted by Counsel for the Plaintiff that it can be discerned from the evidence of the Plaintiff that between 2004 – 2013, when the meter was removed, the Plaintiff had not been disconnected for non-payment or anything else. Referring to the various bills issued by the Defendant to the Plaintiff – Annexure A, Counsel argued that the Plaintiff lawfully obtained electricity supply to its premises and court should hold so.

Counsel pointed out that power was disconnected on 23.10.13, on the ground that the meter was suspected of not performing well. The feedback from the Defendant was that the meter was under registering yet according to the Defendant's report, all the factory seals of the meter were intact.

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Therefore that, there was nothing wrong with the meter and none of the Plaintiff's officers attended the first testing of the meter. That the power was disconnected without lawful justification as the Plaintiff was paying.

10 Further that, the Defendant brought its meters and kept them outside the Plaintiff's premises in the Defendant's own locked boxes to which the Plaintiff had no keys and therefore could not access the meter. Referring to Exhibit D₁ – tendered by DW₁ – dated 24.04.14. And also the evidence of DW₂ to the effect that there were no signs of breakage into the meter.

15 Commenting about the evidence of DW₃, Counsel contended that, there was no way the meter could be tampered with by the Plaintiff when the keys to the meter box was kept by the Defendant.

He argued that, the evidence of the Defendant was marked with contradictions and
20 inconsistencies and that it is not clear whether the alleged tampering was done by the Plaintiff's agents or the Defendant's agents who took the meter for testing.

It was insisted that the Plaintiff was condemned to the disconnection before tests were carried out and this led to the fraud billing of Shs. 108,400,000/- which was later adjusted to Shs.
25 89,355,071/- without the Defendant explaining how the adjusted figure was arrived at. That there was no tampering with the meter by the Plaintiff and the disconnection of power supply was unlawful.

In reply, it was contended by Counsel for the Defendant that the Plaintiff obtained power
30 illegally by tampering with the meter causing it to under register power. And that there is evidence that the Plaintiff had been previously disconnected in 2012 because of tampering with the meter and the bill had been paid.

Further that the testing of the meter under the tests approved by ERA found that the seals of
35 the meter had been broken and the meter tampered with – Referred to the evidence of DW₁

adding that, the meter was subjected to further accuracy tests on the orders of this court and the findings of UNBS are in tandem with those of the Defendant in Exhibit DE₁

From the testimony of DW₁ and DW₂ and from the finding of UNBS, the meter had been tampered with as the factory seals had been cut and it was under registering by at least 41.8%, meaning that the Plaintiff was obtaining power illegally. The contention that the tampering could have been done by the Defendant was not correct.

The fraud bill amounted to Shs. 89,355,071/- for the unregistered power supply and the Plaintiff ought to pay for the same.

This was confirmed by the evidence of DW₄.

And under Clause 7.6 of the Electricity Grid Code (Electricity Primary Grid Code) Regulations 2003, the licensee may estimate the usage of power by a consumer obtained in a manner not permitted by the code, and for which the consumer has not paid and it is called the fraud bill.

This usage was confirmed by the evidence of DW₃ – foreign relay placed on the meter to control supply of power. And therefore the Plaintiff in its own ways must have accessed the meter and tampered with it even though the key to the meter box are supposed to be kept by the Defendant only.

It was emphasized that, it would not benefit the Defendant to tamper with the meter when it is in the business of supplying power for which it is paid and there would be no benefit at all if the Plaintiff consumed less and paid less. The Plaintiff did not show any ill motive that could have led the Defendant to maliciously tamper with the meter and then place the fraud bill on the Plaintiff.

Counsel referred to the evidence of DW₂ – to the effect that there was a record on the file of the Defendant indicating that six months before the disconnection, the Plaintiff meter was suspected to have been tampered with but when it was tested and found to be okay, it was returned and re-installed.

That Clause 7.5 1 (d) of the Electricity Grid Code prohibits a consumer from tampering with or permitting to tamper with the meter or associated equipment. Adding that, the initial fraud

bill of Shs. 108,400,000/- had a computation error arising from including an extra month which had been paid for, and hence the adjustment to Shs. 89,355,071/- which was not challenged. And that the Defendant was justified to issue the fraud bill to recover the unregistered consumption by the Plaintiff arising from tampering with the meter and to disconnect the Plaintiff's power supply.

In rejoinder, Counsel for the Plaintiff insisted that since the seals of the meter were intact, there was no way the Plaintiff or its agents could tamper with the meter, more so when the keys to the box were in possession of the Defendant's agents. The claim by the Defendant that in 2012, the Plaintiff tampered with the meter is not backed by evidence on court record and no reason was given for the Defendant's failure to produce the original document of the report marked ID₁.

S.63 of the Evidence Act was relied upon for the provision that *"a document must except in cases referred to in S.64 of the Act be proved by primary evidence"*. – The case of **DPP of Tanzania vs. Nattian [1966] EA 13** was cited in support.

Further that, *"an item tendered for identification does not become an exhibit until it is formally proved and admitted in evidence"* - **Biteremo vs. Situma SCCS 15/91 (unreported)**.

He pointed out that ID₁ was not properly proved in court yet the document is in custody of the Defendant. On the other hand that Exhibit B tendered for the Plaintiff – Exhibit C Bills and pay slips for the period before disconnection and those for the period after disconnection of the power and the old meter and the new meter almost show the same amount of consumption. The documents and meter test report made six months before disconnection of power were not tendered in evidence.

Referring to Regulations 24.2.2 and 24.2.3 of the Electricity Grid Code, Counsel asserted that it is the obligation of the Defendant to keep records of all its meter tests report and to indicate the date of the last meter test.

And while the reports of the Defendant and UNBS show that the meter was under registering, different percentages of under registering are presented. Counsel argued that the UNBS report shows that no seals were found on the meter, not even the Umeme seals. This is contrary to

the Exhibit DE₁ – meaning that the meter in custody of the Defendant was further tampered with. The reports do not tally.

In determining the issues in the present case, the court will bear in mind the following:-

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“The burden of proof that the Plaintiff did not illegally obtain power supply from the Defendant, and that the disconnection of the Plaintiff’s power supply was unlawful lies on the Plaintiff”. - SS 101 (1) (2) and 103 Evidence Act. And the case of **J.K Patel vs. Spear Motors SCCA 04/91 [1993] VI KALR 85** and **Joseph Constantine Steamship Line vs. Imperial Smelting Corporation Ltd [1942] AC 154 at 174.**

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Also that, it is trite law that the standard of proof required in civil cases is on the balance of probabilities. – **Miller vs. Minister of Pensions [1947] 2 ALL ER 372.**

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The evidence of the Defendant in the present case is that upon testing the meter of the Plaintiff, it was found without seals and had a foreign relay inside it, as a result of which the meter was under registering power. The general remarks of the testing report were that the meter failed the functional and detailed tests and concluded that the meter had been tampered with and was recommended for scrapping. A fraud bill was given to the Plaintiff.

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The Plaintiff, as already indicated in this judgment did not agree with the findings of the Defendant in its report.

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The document relied upon by the Defendant is ID₁ and ID₂, which was never formally produced and tendered as an Exhibit in court. But this court finds that it is the same report that were tendered by the Plaintiff as Exhibit P and Exhibit P₂.

The objections of the Plaintiff that the documents cannot be relied upon are overruled.

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In any case, it is on record that on 24.02.14, court directed vide HCMA 51/12 that a) the Director of UNBS officers go to the Defendant’s offices and test the meter in dispute between the Applicant/Plaintiff and Defendant and avail a report of their findings by 12.03.14.

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On 21.03.14, another order was issued by the court directing the Defendant to send the meter to UNBS for testing and that an officer of the Defendant accompanies the meter to UNBS

offices and attends the testing of the meter. UNBS was further directed to avail a report of their findings before 27.03.14.

UNBS carried out the tests and issued a certificate of analysis dated 24.03.14. The report is indicated that the meter was analyzed as per IEC Standard US IEC 62053 – 22:2003 which specifies the general requirements, tests and test conditions for static meters used to measure active energy clauses 0.25 and 0.55. It was also pointed out interalia that **“the energy meter analyzed above does not meet the minimum accuracy requirements of the standards on all loading conditions checked as required ion the above standard”**.

On 15.04.14, the court also directed UNBS **“to offer its professional opinion as when the meter in dispute could have been tampered with”**.

The Applicant/Plaintiff was also ordered to deposit Shs. 15,000,000/- as security for compliance with the outcome of the main suit, after the deposit of which the Respondent was ordered to reconnect the Applicant/Plaintiff’s premises with a new meter.

The report of UNBS dated 28.04.14 indicated that the team had no technical capacity to test the electricity meters for accuracy and to estimate when the meter had been tampered with. Therefore that it could not offer its opinion on that.

It is not clear from the evidence available, at what stage the seals that had been fixed on the meter were removed – Exhibit DE₁. The meter query form dated 23.10.13 Exhibit PE₂ – does not state the condition under which the meter was found before it was removed from the Plaintiff’s premises and delivered for testing. Although Exhibit PE₃ the test meter report dated 24.10.13 (Defendant’s ID₁) and the UNBS certificate of analysis indicate that the meter had been tampered with.

However, this evidence cannot be relied upon to conclude that it was the Plaintiff that tampered with the meter. There has to be other evidence linking the Plaintiff to the tampering with the meter.

This is because the undisputed evidence by the Plaintiff is that the Defendant brought the meter to the Plaintiff’s premises but kept them in their own box outside the premises. The box was

locked by the Defendant's officers, checked by them and sealed by them. No keys for the meter boxes are kept by the Plaintiff and no reports of efficiency are made about the meters. The date the meter was taken from the Plaintiff's premises, the keys were brought by the Defendant's officers, who opened the box and removed the meter and the Plaintiff only signed to acknowledge that the meter had been taken for testing.

Exhibit DE₁ dated 26.04.14, hereby shows that the seals re-affixed on the meter after the first test of April, 2013 were the seals of the Defendant. They are the same seals the second test report indicates were found in the meter. There were no factory seals.

The question therefore is, if the meter was re-sealed by the Defendant, re-installed and kept under lock and key by the Defendant and the Plaintiff was not provided with any key to the meter enclosure, how could it have been the Plaintiff who tampered with the meter?

Can the signal cables for the yellow phase that were found cut, and the transformer code found removed from the current transformers be attributed to the Plaintiff in those circumstances; more so when the Defendant's locking ring seals were still intact as when replaced by the Defendant? – Exhibit PE₃ / ID₁ could the inference of tampering or by pass of the meter be drawn from the mere fact that the meter had been under registering by approximately 41.8% as per the accuracy test?

According to the case of **Management Training and Center vs. Patrick Kakuru Ikanza SCCA 6/1985** – Wambuzi J – “...*an inference cannot be readily drawn from proved primary facts if there are other co-existing facts which weaken or destroy that inference*”.

In the present case, the seals of the Defendant found intact on the meter during the second testing exercise were the same that Defendant used to re-seal the meter. The Plaintiff had no access to the meter thereby destroying any inference that the meter was tampered with by the Plaintiff.

The available evidence also indicates that the meter was kept in a location that only permitted officers of the Defendant who had possession of the key access to the same.

The Electricity Grid Code demands that, the consumer must have tampered with or permitted tampering with the meter or associated equipment, or by passed, or allowed electricity supplied to the supply address to bypass the meter, to qualify for illegally obtaining power.

- 5 Since there is no evidence to link the Plaintiff with the tampering with the Defendant's meter, this court finds that the Plaintiff did not illegally obtained the supply of the electricity.

The next issue is **whether the disconnection of the Plaintiff's power supply was lawful.**

- 10 The Electricity (Primary Grid Code) Regulations – Clause 15.5.1 give the Defendant discretionary powers to disconnect power supply to a consumer's supply address if a consumer has not paid or adhered to the consumer's obligation to make payments in accordance with an agreed payment plan.

- 15 In the present case, the Plaintiff tendered in evidence the receipts of payment electricity bills, collectively marked as Exhibit P1. These indicate that the Plaintiff was paying for the electricity, standing service / and electricity usage, capacity charge and charges for other services rendered by the Defendant.

- 20 Another instance where the supplier may disconnect the power immediately is where the consumer has obtained the supply of power otherwise in accordance with the code – Clause 15.5.1 – Electricity (Primary Grid Code) Regulation.

- In this instance the supplier has to have evidence under Clause 7.5.1 (d) and © of the Code
25 Regulating, that a consumer tampered with, or permitted tampering with the meter or associated equipment, by passed, or allowed electricity supplied to bypass the meter.

- The evidence adduced in this case is to the effect that the Plaintiff's power supply was disconnected because the Defendant suspected the Plaintiff to have tampered with or allowed
30 tampering with the meter, and bypassed or allowed by passing the meter. But as already indicated, this court has found that, that was not the case.

Without any evidence that it was the Plaintiff who tampered with the meter, it follows that the disconnection of the power supply to the Plaintiff's premises was unlawful.

The Defendant having discovered that the meter could not record the amount of power consumed by the Plaintiff was entitled to take remedial steps to ensure that losses were minimized or stopped by installing a new meter, while investigations were on going.

5 The Plaintiff was instead given a fraud bill of Shs. 108,438,025/- which was later adjusted to Uganda Shs. 89,355,071/- on the ground that there was an error in computation as a double charge had been made. The figures were communicated to the Plaintiff after the test report. But the Plaintiff declined to pay the fraud bill, although he has continued to pay the accruing electricity bill.

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The computation of the losses begin in October, 2012 – 22.10.13 when the disconnection was effected.

15 According to Exhibit PE₃ / ID₁ – there was no study of the previous billing record of the Plaintiff to determine whether or not there was unregistered consumption and the approximate period when the Plaintiff's meter was affected.

A consumer's bill ought to be based on a reading of the meter at the consumer's supply address – Clause 12.3 of the Code.

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For the period of twelve months prior to the disconnection, the Defendant billed the Plaintiff for electricity consumed based on the readings of the Plaintiff's meter at the premises – Exhibit P. The disputed meter was on 26.04.13 tested and found to be okay and was re-installed – Exhibit DE₁. The Defendant continued to read and charge the Plaintiff for electricity consumed
25 as registered by the same meter from 01.05.13 to 01.11.13.

And there is no evidence to indicate that the Plaintiff's consumption pattern had changed before and after re-installment of the disputed meter. Court is inclined to believe that the Plaintiff's normal power consumption was that that existed prior to 26.04.13, when the meter was found
30 to work normally as per Exhibit DE₁.

The average consumption over that period should be a fair basis on which to determine consumption for the six months from the date of re-installation up to 23.11.13, when the disconnection was effected. The rule to determine the total consumption should be that which was applicable over the six months period prior to disconnection.

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Before coming up with the fraud bill, the Defendant's officials also ought to have taken into account that stop passages in the electric meter could also have resulted from inherent defects or flaws and not necessarily from tampering; more so since the factory seals had been removed and replaced with Defendant's seals.

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Further, the Defendant owed a duty to the Plaintiff to explain the basis used in arriving at the figures claimed in the fraud bill, more so in those cases where there were unregistered consumption.

10 This court therefore agrees with Counsel for the Plaintiff that, it was wrong for the Defendant to come up with a fraud bill of Shs. 108,438,025/- which was later adjusted to Shs. 89,355,071/- Exhibit PE₅ / ID Exh1 – without making a thorough analysis of the problem. More so having failed to prove that it was the Plaintiff who tampered with the meter.

15 The Defendant can only recover the real load of electricity the Plaintiff consumed for the six months period prior to 23.10.13 as already stated in this judgment. A computation has to be made using the rates that applied within the period to arrive at a just figure. If the total comes to Shs. 89,355,071/- at least the Plaintiff will be aware of the formula and rate used to arrive at the same.

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The Plaintiff contended that it was not given a fair hearing before the decision was taken to disconnect the power supply and that therefore the Defendant breached their fundamental right to a fair hearing.

25 Also that, they were not present when the meter was tested on the allegation that it was under registering power.

However, the Defendant contends that before the power supply was disconnected, the Plaintiff was accorded an opportunity to be present at the testing but opted not to attend. And that the Plaintiff's electrician was present at the initial testing and therefore the Plaintiff's stooped from claiming that they were denied an opportunity to be present when the tests were done in the laboratory. During the test done by UNBS on the order of court, PW₁ was present and the results were the same as those of the Defendant.

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Alternatively that, there was no contractual obligation on the Defendant to ask the Plaintiff to be present at the time test.

From the evidence available in the present case, the disconnection of the power supply to the Plaintiff was by administrative decision made by DW₂ in consultation with DW₄. The Plaintiff was not heard before the decision was taken. The testing of the meter which the Plaintiff was asked to attend was done after the disconnection had been made.

Court accordingly agrees that the Plaintiff was not accorded an opportunity to be heard before the disconnection was done.

What remedies are available to the parties?

General and special damages, interest on the sums together with costs were applied for by the Plaintiff.

General Damages:

The Plaintiff sought for general damages on the ground that losses were incurred during the period the power supply was disconnected until another meter was availed following a court order. The Plaintiff was not in operation during that period but continued to pay workers and lost profit that would have been made during that period.

And that since the Plaintiff suffered damage due to the wrongful act of the Defendant, it must be put in the position it would have been if the wrong had not been suffered. The case of **Charles Acire vs. Myaana Songola HCCS 143/1993** and **Kibimba Rice Ltd vs. Umar Salim SCCA 17/1992** were cited in support.

And the figure of Shs. 50,000,000/- was sought as general damages.

For the Defendant, it was argued that the power disconnection was justified and so was the issuing of the fraud bill. And that since the Defendant acted lawfully and within its mandate, it cannot be faulted and therefore should not be condemned in general damages.

Decided cases have established that the award of general damages is in the discretion of the court and damages are what the law will perceive to be the natural consequences of the

Defendant's act or omission. And the object of awarding general damages is to give the Plaintiff compensation from the damage / loss or injury suffered. – Refer to **James Fredrick Nsubuga vs. the Attorney General HCCS 13/1993**, **Charles Acire vs. Myaana Sogola HCCS 143/1993** and **Kibimba Rice Ltd vs. Umar Salim SCCA 17/92**.

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In the present case, it is not disputed that the Plaintiff's power supply was disconnected from 23.10.13 until 30.04.14 when it was reconnected by court order. A period of approximately six months, during which the Plaintiff was greatly inconvenienced as no production could go on and certainly suffered loss. During this period of inactivity, the employees' salaries were

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being paid.

The figure of Shs. 50,000,000/- proposed by Counsel for the Plaintiff is on the high side in the circumstances. More so as the actual losses can be compensated for by way of special damages. The Plaintiff is accordingly awarded Shs.12,000,000/- as general damages.

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This court bears in mind that *“general damages is that substantial physical inconvenience, or even inconvenience that is not strictly physical, and discomfort caused by a breach of contract and entitles the Plaintiff to damages....”* – Refer to **Syivan Kakugu Tumwesigiyire vs. Trans Sahara International General Trading L.L. C HCCS No. 95/2005** where

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Kiryabwire J relied upon the case of **Robbialac Paints (U) Ltd vs. KB Construction Ltd [1976] HCB 45**.

Special Damages:

The Plaintiff's claim for special damages was based on the contention that during the period they were disconnected, they suffered a daily loss of Shs.10,000,000/- - Refer to sales invoices “F”. That the great loss was occasioned by the Defendant's unlawful actions.

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The loss of Shs. 10,000,000/- amounts to about Shs. 3,000,000,000/- a year. And comparing to the profits earned in the previous years, the profits would have been in the range of Shs. 20,000,000/- a year after deducting expenses. The financial statement for the year ended June 2014, indicates retained profits of Shs. 39,500,659/- for a period of twelve months. Therefore that on the average, the company was making about 3,500,000/- in profits per month.

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It was argued for the Defendant that special damages must be specifically pleaded and proved and that in the circumstances of this case, the Plaintiff's claim for special damages is unjustified.

5 Referring to the Plaintiff's book of accounts, showing the financial position for the years 2012, 2013 and 2014, it was contended that the Plaintiff's claim that Shs. 10,000,000/- per day was lost was not substantiated. There was no evidence to prove that the company was making the claimed profits.

10 That as seen from the evidence of PW₁ the net profit of the Plaintiff company for the year July 2011 – June 2012, July 2012 – June 2013 was 18,096,234/- and 26,765,059/- respectively; while the retained profit for the period July, 2013 – June 2014 was Shs. 39,500,659/-.

Taking the three years into account, the average net profit made by the company was therefore
15 Shs. 28,120,650/- which translates into a monthly average of Shs. 2,343,387/-.

Therefore that, if court finds that there was no justification for disconnecting the Plaintiff's power hence entitling the company to special damages, then the damages cannot be in excess of Shs. 14,000,000/-.

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It was also the argument of Counsel for the Defendant that while the Plaintiff's financial statements indicate that license fees were paid for 2011, 2012 and 2014, there was no evidence of payment of such fees for 2013.

25 Without such a license, Counsel asserted, the company operated illegally in 2013. And that to allow compensation to the Plaintiff for the period would amount to condoning an illegality.

He relied on the case of **Austine Automobile. Le Spelle Ltd vs. Crane Bank Ltd & Another SCCA 21/2001** to argue that *“once an illegality is brought to the attention of court, it
30 overrides all questions of pleadings and courts cannot enforce what is illegal”*.

Reiterating the earlier submissions, Counsel for the Plaintiff while agreeing with the principle of law concerning illegality pointed out that the Plaintiff committed no illegality as alleged by the Defendant since the Trading License 2013, was paid for on 03.05.13 – copy marked as “A”.

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As required by law, the special damages and loss of profit were specifically pleaded by the Plaintiff. The Plaintiff tendered in evidence Exhibit PE₆ – summary of its sale invoices for the months of October, June, May, March and February, 2013 of Shs. 447,841,308/-, Shs. 447,988,500/-, Shs. 347,855,500/- and Shs. 353,651,600/- respectively.

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The financial statements for the years ended 30th June, 2010, 2011, 2012, 2013 and 2014 with the following amounts retained as profits Shs. 9,632,934/-, Shs. 29,762,705/-, Shs. 18,096,234/-, Shs. 26,765,059/- and Shs. 39,500,659/- respectively.

10 In the present case, the evidence available is that during the period the power supply of the Plaintiff was disconnected, the business operations were halted and as a result the Plaintiff lost earnings and profit. This court has already found that the power supply of the Plaintiff was wrongly disconnected by the Defendant. The loss incurred by the Plaintiff during the period of disconnection can be estimated based on the previous performance of the business of the
15 Plaintiff.

Duly lost ***“net profits can be allowed as damages in the present case, computed by estimating the gross revenue that would have been earned but for the wrongful act of the Defendant”.***

20 According to the Plaintiff’s Exhibit P7₄ – P7_G – consisting mainly of financial statements the average retained net profits made by the Plaintiff of five years from 2010 inclusive – 2014 is Shs. 123,757,591/-. Divide by 4 ½ years = 27,501,687/- as net profits retained every year.

Shs. 27,501,687/- divide by 12 = 2,291,807/-. For the six months the power was disconnected
25 and Plaintiff was out of production would amount to Shs. 2,291,807 X 6 = Shs. 13,750,843/-.

It is apparent that the Plaintiff was making profits less than the Shs. 10,000,000/- per day which were claimed. The Plaintiff is accordingly awarded the Shs. 13,750,843/- which was proved as special damages.

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The issue raised by Counsel for the Defendant that the Plaintiff was doing business illegally for the year 2013, was disproved by the Plaintiff’s trading license of 2013.

Permanent Injunction:

The Plaintiff sought a permanent injunction to restrain the Defendant from disconnecting the power.

It was the submission of Counsel for the Defendant that, issuing the injunction would frustrate the contract of power supply between the parties. And that the Plaintiff is under obligation to pay bills for power consumed as consideration for the Defendant supplying the power.

He pointed out that the Electricity (Primary Grid Code) Regulations Clause 15.1.1 *“empower the Defendant to disconnect power supply to the consumer’s address is the consumer has unpaid bills or has failed to adhere to the obligation to make payments in accordance with the agreed payment plan”*.

That issuing the permanent injunction to stop the Defendant from disconnecting the Plaintiff’s power supply would adversely affect the Defendant if the Plaintiff were to have outstanding bills.

I would agree with Counsel for the Defendant that, in view of the above provision of the law, the injunction cannot issue. To issue the injunction would frustrate any further efforts of the Defendant to collect outstanding electricity bills from the Plaintiff, if any.

Interest:

The Plaintiff sought interest of the decretal sums, if any, allowed by court.

Under S.26 (2) CPA – court has discretionary powers to award interest if not agreed upon by the parties.

In awarding interest in this case, court takes into account that the suit arose out of a commercial transaction, which call for award of interest at a higher rate.

Interest is accordingly awarded on the special damages from the date of disconnection until the payment in full.

Interest is awarded on the general damages from the date of judgment till payment in full.

Order Directing Re-Connection: This order was given at the time of hearing and power was re-connected.

Costs: It was prayed that costs be awarded to the Plaintiff. S.27 (2) CPA was cited in support together with the case of **Jennifer Rwanyindo Anerlia & Another vs. School Outfitters (U) Ltd CACA 53/1999** and **National Pharmacy Ltd vs. Kampala City Council [1979] HCB 25** – for the holding that “*costs follow the event unless for good cause court directs otherwise*”.

Counsel for the Defendant submitted that the Plaintiff was not entitled to costs.

The Plaintiff having been successful in the suit is entitled to costs, contrary to the submissions of Counsel for the Defendant.

Costs of the suit are therefore awarded to the Plaintiff.

Judgment is entered for the Plaintiff in the following terms:-

1) The Plaintiff is awarded special damages of Shs. 13,750,843/-.

2) The Plaintiff is awarded general damages of Shs. 12,000,000/-.

3) Interest is awarded on special damages at the rate of 21% per annum from the date of disconnection until date of reconnection.

4) Interest is awarded on general damages at the rate of 6% per annum from the date of judgment until payment in full.

5) The parties to sit and reconcile figures to determine what remains unpaid of the so called fraud bill, which in essence was money due and owing for power used during that period when the meter was under performing. The figure the parties come up with will be offset from what has been awarded to the Plaintiff.

6) Costs of the suit are also awarded to the Plaintiff.

Flavia Senoga Anglin

JUDGE

5 **23.11.17**