

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
COMMERCIAL COURT

CIVIL SUIT No. 26 OF 2010

5 **FRED SSEKAMWA ::: PLAINTIFF**

VERSUS

UMEME LTD ::: DEFENDANT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

10 **JUDGEMENT**

The plaintiff instituted this suit against the defendant seeking special and general damages for breach of contract, loss of business opportunity arising out of extortions and intermittent supply of power and costs of the suit.

15 The brief facts of the case are that the plaintiff inherited an electricity bill that had been consumed by the plaintiff's predecessor in the business premises where he operated a small scale industry to wit, a maize mill and a soap manufacturing factory.

That at the time, the defendant had disconnected electricity supply which prompted the plaintiff to seek reconnection of the power. That as a condition for reconnecting the power,
20 the defendant required the plaintiff to acknowledge and pay the outstanding debt of UGX 5,432,800/=.

That consequently, the parties entered into an agreement where the plaintiff undertook to pay the defendant an outstanding amount of UGX 5,432,800/= for electricity. That the plaintiff dully paid the said amounts.

25 However, the defendants acting through its agents regularly visited the plaintiffs business and disconnected the power. That he was forced to pay in millions but still his power kept on being disconnected.

The plaintiff averred that the acts of the defendant through its members of staff has led to breach of contract which caused him financial loss for which the plaintiff claims special, general and punitive damages plus the costs of the suit.

On the other hand, the defendant denied the claim in total and averred that on various occasions, the defendants staff found anomalies occasioned by the plaintiff regarding power supply to the premises in question; that on some occasions, the plaintiff had unpaid bills and that any disconnections were always lawful.

When the suit came up for hearing, the defendant raised a preliminary objection that the plaintiff's plaint raised no cause of action and that it should be dismissed with costs. This court however overruled the preliminary objection with costs and set the suit for hearing.

The parties with leave of court amended their pleadings.

Issues for resolution

1. *Whether the disconnection of the plaintiff's power was unlawful*
2. *Whether the plaintiff suffered any loss arising from the disconnection of the defendant*
3. *Whether the defendant is entitled to the remedies sought*

Issue One: *Whether the disconnection of the power was unlawful,*

The plaintiff's case was that he sought to connect power to his maize Milling and Soap making factory. He found a power debt on the premises and was made by the defendant to sign an undertaking to pay the debt. That the defendant never connected power despite the plaintiff's biddings, later when they connected it, they removed a cable and a meter and required the opening of a new account, in an attempt to extract money from the plaintiff.

On the other hand, the defendants submitted that the plaintiff's power supply was disconnected on several occasions for different justified reasons. That the onus to prove disconnections lie solely on the plaintiff.

According to **PEX1**, in the contract between the plaintiff and the defendant, it was agreed between the parties that the plaintiff would pay the outstanding amounts on meter number 111120754- Ex Service Men and the defendant undertook under the agreement not to disconnect the supply of power.

Sekamwa Fred - PW1 stated that because he was in urgent need of power, he paid UGX 3,000,000/= and UGX 11,800/= on the 20th of September 2007 as evidenced by **PEX 2** and **PEX3**.

PW1 further stated that despite him paying part of the contract fee, power was not connected because the meter was removed. He further stated that he complained to the defendants agent called Nsubuga who forwarded him to another agent called Masaba who issued a document [P1D 1] on which it was written that, *the customer was not handled by LRC Bugolobi and that he has refereed him to Nateete*.

PW1 stated that he later paid UGX 2,400,000/= in hope to be connected. As evidenced by **PEX 4**, and he was later asked to pay UGX 331,700/= and he did as evidenced by **PEX 5** But the defendant did not connect the power.

Pw1 further stated that the defendants said agent Nsubuga directed him to pay UGX 200,000/= which he did per **PEX 7**. On 31st December 2007, the defendant's agents connected power but it was done without a meter. The factory operated for 2 hours and the defendants agents came and disconnected power.

PW1 further stated that he was advised to pay a penalty fee of UGX 500,000/= plus a reconnection fee which he did. That the same Masaba advised him to pay UGX 1,040,000/= which he did and he gave him an acknowledgement. That power was reconnected on about 4th Jan 2008 and it operated up to 15th Jan 2008 and was disconnected.

PW1 further testified that the meter arrived in April 2008 but had prior readings, he complained but there was nothing done. That from April 2008 to December 2008, he had no power.

I am of the opinion that since the plaintiff had paid the alleged debt, the defendants owed him a duty of care to at least avail him a working meter immediately after the payment of the money and not almost a year later.

It appears to me that the defendant's servants used to just get money from the plaintiff with a promise to connect his power. For instance, **PEX 9**, he is asked to pay UGX 1,040,696/= as lost energy billing. The defendant's agent forbids the defendant to pay in the bank but takes the money and simply gives an acknowledgement letter of receipt of the money. I find this to be irregular, needless to say.

The plaintiff on top of paying the penalty fee of UGX 500,000/= [PEX 8] which he paid on the 4th January 2008, he is asked to pay another fee of UGX 1,040,000/= which he pays on the same date, 4th Jan 2008.

The defendants connected the power again and the defendant's agents come two weeks later and disconnected the defendant's power asking him to pay UGX 400,000/= which he paid. This is a person who has in a period of two weeks paid about UGX 2,000,000/=.

The defendant's employees then brought the meter but it had prior readings. The plaintiff does not have power for almost 8 months. And when it is connected, the defendants disconnect it in the same month on grounds that the account was terminated [Per PEX 13]. The issue gets solved in August the following year. The following month, the power is disconnected per PEX 14.

One would wonder why the defendants did not first verify the account before connecting the power. The plaintiff was a customer of the defendant and there was a contractual relationship between the two.

Section 10 (1) of the Contract Act 2010 defines a contract to mean an agreement made with the free consent of parties with capacity to contract for lawful consideration, a lawful object/s and with an intention to be legally bound. A contract according to **Pollock - Principles of Contract 13th Edition** connotes an agreement giving rise to an obligation recognized by law. Such obligations are to be discharged through performance failure of which amount to breach of contract.

According to PEX 1, the defendants were duty bound to not only connect the plaintiff's power but also not to disconnect him. From the evidence before me, the defendants failed to reconnect the plaintiff even after he fully paid the outstanding bill. When they finally connected him, they came and disconnected him several times even after he had paid the requisite fees.

On this issue therefore I find that the defendants unlawfully disconnected the power of the plaintiffs. Further as a result of the disconnections, the plaintiff suffered loss which answers issue 2 in the affirmative.

Remedies

The plaintiff sought the following remedies;

1. Special damages

Section 61 of the Contract Act of 2010 provides that the party who suffers from the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage sustained by reason of the breach. The breaking of obligations which a contract imposes confers a right of action for damages on the injured party (See *Ronald Kasibante Vs Shell Uganda Ltd HCCS NO. 542 of 2010*). The plaintiff sought the following special damages;

UGX 5,432,800/= being the amount the plaintiff was forced to pay vide deed for acknowledgement of debt and undertaking to pay on 26/09/2007

UGX 11800/= being reconnection fees of 20/09/2007

UGX 331,668/= being payment of 3 phase power meter.

UGX 511,800/= being payment for reconnection of 04/01/2008

UGX 1,052,496/= of 03/01/08 allegedly energy loss.

UGX 700,000/= of 7/12/2007 paid into account and in advance.

UGX 438,117/= of 16/01/2008 paid allegedly for energy loss but later found to be for Lwakuba Alex on 17/01/08.

UGX 250,000/= paid to account on 7/02/08 in advance.

UGX 200,000/= paid to the account in 9/04/08 in advance.

UGX 100,000/= paid to the account on 19/12/08 in advance.

UGX 50,000/= paid to the account on 27/12/08 in advance

UGX 50,000/= paid to the account on 19/12/08 in advance

UGX 100,000/= paid to the account on 18/12/08 in advance.

UGX 150,000/= paid to the account on 12/01/09 in advance.

UGX 200,000/= paid to the account on 26/09/09 in advance.

Counsel for the plaintiff submitted that the plaintiff was entitled to the refund of the monies that he paid to the defendant as shown in exhibit **PE1, PE2, PE3, PE4, PE6, PE7, PE8** and

PE10. The plaintiff has proved that he paid these amounts but electricity was scarcely on. Having found that the defendant unlawfully disconnected the defendant's power, I find that the plaintiff is entitled to these.

The plaintiff also sought the recovery of UGX 233,676,878/= being value of the materials for maize and soap spoilt while being processed, due to power disconnection and the value of
5 UGX 409,000/= being the cost of the payments to workers who remained redundant during periods of disconnection of power.

The plaintiff solely relied on the financial statements to support the claim for damages. On the other hand, counsel for the defendant averred that these were not strictly proved as
10 required by law. That the plaintiff did not adduce evidence to show whether he operated that factory. That there was balance sheet, no invoice, no purchase order extra.

On this point, I am inclined to agree with counsel for the defendant. The plaintiff has not proved the business operations or quantified the losses. Also the alleged salaries paid to the workers were not proved. The plaintiff did not adduce any evidence either by way of payslips
15 or even bank financial statements to show that the money was remitted from his account to the employees account. The report on financial statements relied on by the plaintiff does not strictly prove that those amounts were actually spent by the plaintiff.

It is trite that special damages are restrictive; they do not deal with estimates but rather with exact financial losses.

20 See **McGregor on Damages 15th Edition, paragraph 1758A;** and in ***Joseph Musoke Vs Departed Asian Property Custodian Board and Another Civil Appeal No. 1992 (reported in [1990 – 1994] 1 EA 419,*** where court held that;

25 “.....special damages must be explicitly claimed on the pleadings, and at the trial it must be proved by evidence both that the loss was incurred and that it was the direct result of the defendant's conduct

Under the circumstances, I find that the plaintiff has not proved these figures and the claim is disallowed.

General damages

30 The plaintiff stated that he suffered and was inconvenienced. It is trite law that damages are the direct and probable consequence of the act complained of as noted in the case

of *Kampala District Land Board & George Mitala Vs Venansio Bamweyana Civil Appeal No. 2 of 2007*. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. Also see; *Assist (U) Ltd Vs Italian Asphalt & Haulage & Anor HCCS No. 1291 of 1999 at Pg 5*.

5 In the instant case, there is evidence to show that the plaintiff was greatly inconvenienced by the defendant. He never got a stable supply of power yet he paid all the sums of money that the defendant asked for. In the circumstances i will award him general damages of UGX 50,000,000/=.

Punitive damages

10 The plaintiff also sought for punitive damages of UGX 90,000,000/= unlike general and aggravated damages, punitive damages focus on the defendant's misconduct and not the injury or loss suffered by the plaintiff. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will always be an affront to society and also the court's sense of decency. They may also be awarded to prevent unjust
15 enrichment. They are awardable with restraint and in exceptional cases, because punishment, ought, as much as possible, to be confined to criminal law and not the civil law of tort and contract.

In the instant case, aafter analysis of the facts in issue and the circumstances of the case, I find that the defendants' conduct towards the plaintiff was oppressive. He paid the alleged
20 debt of UGX 5,000,000/= but the power stayed unconnected. He was asked to pay for a meter, he did it and it appeared a year later and had units already used. The plaintiff walked from office to office almost not knowing what to do. In the circumstances i will award the plaintiff punitive damages of UGX 20,000,000/=.

In the result judgment is entered for the plaintiff against the defendant and the following
25 awards are made;

1. Special damages to a tune of UGX 981, 741/= to the plaintiff.
2. General damages to a tune of UGX 50,000,000/= to the plaintiff.
3. Punitive damages to a tune of UGX 20,000,000/= to the plaintiff.

4. Interest on (1) and (2) above, at the court rate in respect of (1) from date of filing the suit till payment in full and in respect of (2) from the date of judgment till payment in full.
5. Costs of the suit to the plaintiff.

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B. Kainamura

Judge

10 **6.08.2018**