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THE REPUBLIC OF UGANDA
IN THE ELECTRICITY DISPUTES TRIBUNAL
COMPLAINT EDT /09/2015

NALONGO KATENDE TEDDY BABIRYE.....COMPLAINANT

VERSUS

UMEME LTD..... RESPONDENT

JUDGEMENT

The Complainant, Nalongo Katende, a resident of Kanyanya Kikubo Zone Kawempe Division in Kampala District and Namere Zone, Kawempe respectively was throughout the proceedings self-represented. She preferred her evidence in 'Luganda'. Mr. Dissan Kizza, an I.T Specialist with the Ministry of Energy and Mineral Development translated her evidence from Luganda into English and Vice Versa.

The Respondent UMEME Ltd was represented by Ms. Jemina Apio from Shonubi Musoke & Co. Advocates.

Briefly the Complainant claimed to be the owner of two 'Bibanja' interests; on land situated at Kanyanya Kikuubo Zone 4 in Kawempe Division and on land situated at Namere Zone in Kawempe II in Kawempe Division, both in Kampala District.

She claimed that she basically resides at the Kanyanya land and it is at this location that she claims that the Respondent company mismanaged her electricity supply resulting; in wrongful billing, wrongful disconnection, fraud charges and the installation of a strange meter at her home in place of her rightful meter to measure her electricity consumption. The Complainant's testimony and documentary evidence was to the effect that in the three instances that she cited; she was disconnected for purported outstanding bill and or fraud billed; the Respondent subsequently reversed the amounts which were the justification for the disconnection and or fraud bills in issue, and that the meter(s) supplied by the

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Respondent were demonstrably faulty and in other instances bearing different identification numbers from the one in the Respondent's system, resulting in billings that were not verifiably supported by the metering system of the Respondent.

As for the location at Namere, she claimed that the Respondent in December 2013 installed electricity poles and electricity supply lines on and over her property without her consent and in the process, also destroyed her crops, and dug up the surface soil for holes in which they planted poles. She further claimed that in November 2014 as the Respondent was laying out its YAKA processes, it changed the poles previously installed on her land and dumped the poles and other materials on her land until one Suzan Bukenya, a legal officer of the Respondent ordered their removal. She further claimed that on 5/05/2015 the Respondent laid seven (7) solidal wires unto her land to supply electricity to various others of its customers without her signing for the Respondent, Way Leaves or permission to plant poles upon and or pass electric supply lines over her land at Namere. She claimed that in the process, her crops were destroyed and her home turned into a dumping site by the Respondent leaving each and every thing on her door.

The claimant sought in her written complaint, compensation for the damage she sustained, damages for trespass and a permanent injunction to stop the Respondent from trespassing over her land. She did not pursue the latter in the proceedings.

On the part of the Respondent; UMEME Ltd denied in entirety the Complainant's claims. The Respondent claimed that it carries out its duties in a lawful manner; that the Complainant's original meter was found to have been tampered with in a bid to utilize un-metered electricity and that tests carried out by the Respondent at its laboratory confirmed this fact. The Respondent claimed that consequently the Complainant was issued with a fraud bill which she paid together with the then outstanding bill, and she was reconnected.

The Respondent further claimed that in 2011, following a Complaint from the Complainant regarding her meter, her old meter was replaced with a new meter in the same 2011, the year she made a Complaint.

Respondent claimed that in 2012, the Complainant's meter was again found to have been tampered with leading the Respondent to disconnect her once more and

to lawfully impose a justified fraud bill on her following computation of the un-metered energy that she had utilized.

The Respondent concluded its pleadings by claiming to be willing to reconnect the Complainant to electricity supply upon paying her outstanding bills.

As for the claims made against it in respect of the land at Namere; the Respondent denied installing any heavy lines that destroyed the Complainant's crops nor destroyed the surface of the soil on her land by digging holes as alleged. The Respondent further denied that it left any electric poles in a dangerous condition on the Complainant's house nor that it grabbed the Complainant's land by laying seven solidal wires over her property without way leaves nor that it turned her house into a dumping site.

Lastly, but in the alternative Respondent claimed that if there are any electric lines, the same were erected with the Complainant's knowledge and consent and that the Complainant is not entitled to any relief and that the Complaint be dismissed with Costs.

The issues considered within this Complaint were as follows:

- 1. Whether the Respondent on one or more occasions wrongfully disconnected power supply from the Complainant.**
- 2. Whether the Respondent wrongfully levied a fraud bill/s on the Complainant**
- 3. Whether the Respondent trespassed upon the Complainant's land/Kibanja at Namere.**
- 4. Whether the Complainant is entitled to any remedies.**

In considering the above issues the tribunal took in account and evaluated the contents of the Complainant's Statement of Complaint filed in the Tribunal on 22/05/2015, her additional written Statement filed on the 01/04/2016 which was largely an attempt at amplifying the earlier statement filed 22/05/2015. These documents were treated as her evidence in Chief upon Counsel Apio for the Respondent expressing no objection.

We also looked at the exhibits presented by either party in light of the testimonies of the witnesses presented by both parties, the pleadings of the Respondent and

written submissions made by the parties. It be noted that the Respondent's Counsel cross-examined the Complainant and presented one witness in favor of the Respondent for examination in Chief, cross examination and re-examination.

The first issue for consideration was: Whether the Respondent on one or more occasions wrongfully disconnected power supply from the Complainant.

It was not disputed by the Respondent that the Complainant became a customer of the Respondent sometime in November 2005 and was initially supplied electric power through Meter No.1156175 as she alleged in her evidence in Chief and cross-examination. She also claimed that up to September 2008, she was served with what she described as 'normal' monthly bills. She claimed that in October 2008, the Respondent issued to her an extra-ordinary bill of SHS 800,000/= as opposed to the normal average bills of between SHS 30,000/= to SHS 50,000/= that she used to receive and pay previously. She did not furnish to the tribunal the said bill of October 2008 of SHS 800,000/= nor payment receipts for the SHS 30,000/= to SHS 50,000/= that she claimed to have previously been paying.

She however furnished Exhibit **CE25**, the Respondent's tax invoice upon her, by which the Respondent demanded payment of SHS 50,590/= for electricity consumed by the Complainant for the consumption period 12/09/2008 to 22/10/2008, against Meter No. 11561754, account No. 200395063. By her exhibit **CE26** that she tendered in the tribunal, her Customer Information Statement, her actual October 2008 bill as at 11/11/2008 is shown standing at SHS 2,579.48.

Her November 2008 bill stood at SHS 2,433.16

Her December 2008 bill stood at SHS 2,433.16 and the same amount was for the January 2009 bill.

Her February 2009 bill continued in the same vein at SHS 2,506.32.

Her March 2009 bill however shoots to SHS 1,000,003.04.

Her bills between April 2009 to July 2009 are in the range of SHS 153,000/= per month.

It is however noteworthy that according to exhibit **CE26**, the March 2009 bill of SHS 1,000,034.04 imposed on 17/03/2009 was reversed on 8/07/2010 and replaced with a bill of SHS 3,960.20.

Similarly the April bill of SHS 153,291.20 was on 8/07/2010 reversed and replaced with a bill of SHS 14,016.16. Likewise the June 2010 bill previously stated at SHS 2,281.33 was reversed on 8/07/2010. On the same 8/07/2010, the Respondent credits the Complainant's Statement (CE26) with an un-explained SHS 544,756.76 leaving an outstanding bill of SHS 93,424.12 as at 8/07/2010 owing from the Complainant to the Respondent.

We noted that between August 2009 to March 2012 **CE 26** indicates that Complainant's bills stagnated between SHS 1,888.00 to SHS 3,832.64.

The Complainant during the same period made cash payments towards settlement of bills, as follows: SHS 25,000/= on 14-09-2009

SHS 30,000/= on 07-07-2009

SHS 70,000/= on 22-12-2010

SHS 3,600/= on 22-12-2010

SHS 15,000/= on 22-03-2011

SHS 10,000/= on 18-07-2011

SHS 25,000/= on 15-11-2011

The Complainant was however billed for April 2012, a sum of **SHS 2,811,636.15** while subsequent bills from May 2012 to March 2013 are in range of SHS to SHS 32,347.93 at the highest. The bill imposed in April 2012 of SHS 2,811,636.15 is however also reversed on 11/04/2013 to leave an outstanding balance of SHS 49,582.26 on that date. Similarly the bill imposed on the Complainant in May 2012, as the May 2012 bill is reversed on the same 11/04/2013; and replaced with a bill of SHS 3,964.80/= for the month of May 2012.

A further examination of exhibit **CE26** of the Complainant shows that monthly bills from May 2013 to August 2014 range between SHS 39,000/= to SHS

14,000/= but on average at SHS 30,000/= per month. Payments by the Complainant during the same period are in the range of SHS 16,000/= to 45,000/= and on the average SHS 30,000/= per month.

As per exhibit **CE 26**, bills from September 2014 to December 2014 are between SHS 2,000/= to SHS 6,000/= per month while the Complainant makes cash payments of SHS 16,000/= on 15/09/2014 and SHS 26,000/= on 14/11/2014. Her subsequent bills for November is SHS 6,001.48 and SHS 2,251.48 in December 2014 to leave an outstanding balance of SHS 8,199.37/= as on 10/12/2014 which on the same date is narrated on CE26 as a prepayment Debt transfer to leave a zero balance.

Complainant testified that a pre-payment system ("YAKA") was installed at her residence by the Respondent on 3/11/2014. Her testimony briefly, was that she started having problems with the Respondent in 2009 when the Respondent started issuing her with fraud or wrong bills. This appears to be reference to bills of SHS 1,040,398.92/= on 17/03/2009 presented as the March bill; and SHS 153,291.20/= on 21/03/2009 presented as April 2009 bill.

We have noted from **CE26** that the Respondent later reversed both these amounts on 8/07/2010. Complainant testified that on 14/09/2009 the Respondent's agent disconnected her power on grounds that she was in arrears of SHS 1,571,828/= as at that date against Meter No. 11561754 which at time read 256 units. Her service wire was also taken away – She presented exhibit '**CE18**' a 'Disconnection Order' from the Respondent. She claimed to have on 15/09/2009 complained about the disconnection to the Respondent's servant, one Katyaba at the Respondent's offices at TWED Towers. The same Respondent's agents returned on 16/09/2009 and issued her with a fresh 'Disconnection Order' '**CE 19**', upon which they wrote the words '*Meter Reversed and tampered with*'. The sum said to be owing on **CE19** was however now reading SHS 1,571, 823/= unlike the previous day's sum of SHS 1,571,828/= on **CE18**. She presented a 'Notice to Consumer' dated 17/09/2009 '**CE20**' from the Respondent served on her on the same date (16/09/2009), which stated that her meter (No. 1156174) was recovered and taken for test. From a perusal of exhibit **CE 26**, we observe that the amount shown as outstanding on 17/09/2009 is SHS 1,780,764.10 while **CE 18** and **CE 19**, read outstandings of SHS 1,571,828/= and SHS 1,571,823/=. These two figures vary.

The figures of SHS 1,780,764.10 or that of SHS 1,571,823/= both said to be out standings on or about 17/09/2009 include the figures of SHS 1,000,003.04 and SHS 153,291.20 charged on 16/02/2009 and 17/03/2009 respectively but we note that both are reversed on 8/07/2010.

The import of the above is that the Complainant was disconnected based on wrong amounts purported to be owing as at 14/09/2009 or 16/09/2009. The sum of SHS 1,571,828/= against which the disconnection (**CE18**) was effected includes the above amount of (SHS 1,000,003.04 and SHS 153,291.20) which were subsequently reversed. Although the difference is minor, it is not explainable that the figure said to be outstanding of SHS 1,571,828/= on 14/09/2009 came down to SHS 1,571,823/= on 16/09/2009 without any credit within these two days.

In the circumstances, we are of the opinion that Complainant was wrongly disconnected on 14/09/2009 as the amount against which she was disconnected contained two major sums that were later reversed by the Respondent, presumably and in the absence of an explanation from the Respondent must be treated as amounts previously erroneously charged against the Complainant; Otherwise, what would be the reason for the reversal of these amounts. Additionally, the Respondent took away the meter on 17/09/2009 for testing; that act of the Respondent itself was in our view an expression of doubt as to whether its meter No. 1156754 on the Complainant's premises at Kanyanya was functioning well. We noted that the test was not at the request of the Complainant, but at the Respondent's own volition. Complainant's exhibit **CE21** the Disconnection Notice dated the same 16/09/2009 bears writings which state; "*Meter as Bin Taken to Lugogo four Test*". Complainant testified that these words were written on the same Disconnection Notice, earlier exhibited as **CE19**, earlier served on her on 16/09/2009. The words were according to her written on the same Disconnection Notice, **CE19** but on 17/09/2009 when the Respondent's servant returned to take away her meter **No. 11561754**, at the admitted instructions of Mr. Katyaba. Exhibit **CE20**, a '**Notice to Consumer**' dated 17/09/2009 addressed to the Complainant clearly states under box No. 24 thereof that '*Meter was taken for test* and the additional words '*Meter Recovered*'. The act of reversals of sums that had been shown as bills of the Complainant, after the act of testing the meter convinces us that the disconnection carried out on 14/09/2009 was wrongful. There is no further

mention in evidence by either party of the possible outcome of the tests that might have taken place.

The Complainant testified that the Respondent once again disconnected her electricity supply on 21/06/2012 against meter No. **11561754** and served her with a 'Disconnection Order' dated 21/06/2012. The said disconnection order, which was exhibited by the Complainant as "**CE2**" stated that the Complainant was in arrears of SHS 2,747,506/=. It also had a meter reading of 387 Units and bore words handwritten on it stating "*Do not self-reconnection*". The account number shown on **CE2** is the same account number 200395063 that appears on all documents of the Respondent in respect of the Complainant's electricity supply account with the Respondent.

The Complainant argues that this disconnection was also unjustified and unlawful. She furnished to the tribunal the Respondent's bill (tax invoice) admitted as her exhibit '**CE22**'. The said exhibit **CE22** is addressed to the Complainant in respect of her power consumption at Kanyanya. The account number is shown as the same No. **200395063** and meter No. is **11561754**. **CE22** states that the bill shown thereon of SHS 34,613/= is for the consumption period from 22/11/2010 to 22/12/2010, although the billing date is 11/01/2011. The previous meter reading is stated to be an estimated 321 units while the reading at the date of meter reading (22/12/2010) is the same estimated 321 units. We observed that this is the accumulated bill reflected on **CE26** as the December 2010 Bill. Handwritten on the said **CE 22** – the tax invoice are the following words; "*D/M Wandegeya. This account has been having problems with meter at site. I think it was error in our billing system concerning meter no. I think we can replace the old meter with a new one to resolve this problem; signed by Katyaba A, Twed plaza, 0776361078*". The Complainant testified that the said words were written by the Respondent's servant a one Katyaba to whom she had gone to complain on 27/07/2011 at TWED Towers. Mr. Katyaba in Cross-examination admitted making the writing but could not recall the date when he did write on **CE22**. We note that the sum of SHS 2,747,506/= said to be in arrears on account No. 200395063 against meter No. 11561754 of the Complainant as appear on exhibit '**CE2**' the Disconnection Order of 21/06/2012 appears for the first time on the Complainant's Customer Information Statement **CE 26** as the April 2012 bill.

The preceeding accumulated bill as at 26/03/2012 read a paltry SHS 64,130.51. There appears to be no cumulative basis for the bill of SHS 2,747,505.64, the basis of disconnection as per exhibit CE2 and as suddenly rise from the accumulated net bill of SHS 64,000/= in March 2012 as per exhibit CE 26, the information statement produced by the Respondent and whose authenticity was never denied by the Respondent's Counsel. The presumption that the sum of SHS 2,747,505.64/=-, which appears as the April 2012 Bill on **CE26** and as the figure in arrears in **CE2** the Disconnection Notice is a "fraud bill". The meter reading, units of 387 units written on CE2 cannot reasonably support such an abruptly large bill shown in **CE 26**. We believe, it was a sum imposed as a 'fraud bill' on the Complainant by the Respondent, considering that the units were reading 378 units as at the date of 21/06/2012, when **CE2** was delivered to the Complainant.

We however also observe the following that are pertinent in deciding whether this disconnection may also be justified. The Complainant furnished to the tribunal as exhibit **CE23** a 'Notice to Consumer' dated 20/04/2012 addressed to '*whom it may concern, Kanyanya Village, below the park yard*' which she testified was served on her by the Respondent's bill server, on 20/04/2012. Respondent's Counsel agreed to the document to be admitted as Complainant's exhibit **CE23**. **CE23** had in handwritten form the following statements:- "*Meter No at site is different from Meter No in the system; 11561754 in system, 11562247-Meter @ Site*". **CE23** also stated in handwritten form that *Meter 11562247 read the same 370 Units, as current and previous readings. 'Meter Static'; Static yet there's usage of power*. The remarks on **CE23** further read: *Report to the Metering Engineer* Further; written in red ink on **CE23** is a handwritten remark as follows "*Reported to office with Notice. Loss Reduction Team to visit site to verify, signed by one Lubega on 24/03/2012.*"

From the foregoing we observe that the Respondent had by 20/04/2012 noted two problems in relation to the Complainant's supply system; Meter on site, No. 11562247 was different from the meter in their system, No. 11561754 and, the Meter on site was static, reading the same 370 units. The contents of **CE 22**, **CE 23** provide a basis for our opinion that the sum of SHS 2,747,506/= in **CE 2** and **CE 26** are a 'fraud bill', presumably imposed because of continued usage of electricity as stated in **CE 23** yet the meter was static and the earlier comments of Katyaba on

CE 22 that the old meter can be replaced with the new meter, there being an error in the Respondent's billing system concerning meter number.

We received no explanation from either the Complainant or from the Respondent's single witness, Mr. Katyaba, as to why the Complainant was cautioned in **CE 2** not to self-reconnect. The Complainant denied self-reconnecting while Katyaba who was the Respondent's only witness explained that for the Complainant to be disconnected, she must have been using electric power at the time and may have not been previously re-connected. There was no indication that she had previously been reconnected until 15/11/2011 when as per the record on **CE 26** She paid a reconnection fee of 11,800/=. **CE 26** shows monthly bills of between SHSH 2,700/= from July 2010 to SHS 3,832 per month as of 27th March 2012.

Cash Payments of the Complainant are in the range of SHS 70,000/= to SHS 30,000/= in the same period.

The most significant observation on **CE26**, 'The Customer Information Sheet' however is that the sum charged against the Complainant of SHS 2,747,505.64 on 27 April 2012 as the April 2012 bill and presumably the basis of disconnection as shown in **CE 2** is reversed by the Respondent on 11th April 2013 as shown on page 3 of **CE 26**, followed by another reversal of SHS 7,591.53 on the same date against a bill of similar amount imposed on 29/05/2012. The above said figure of SHS 2,747,506/= against which the disconnection of 21/06/2012 (**CE2**) was made was the same amount reversed on 11/04/2013. The disconnection was therefore made against a wrongly computed sum, then stated to be arrears calling for disconnection. The disconnection was in fact not justified as the later reversal by the Respondent reveals and consequently the disconnection was wrongful.

We also note that on Exhibit **CE3** of the Complainant; a 'Notice to Consumer' from the Respondent dated 22/06/2012, in respect of the same account No. 2003395063, the Respondent's servant designated as MAT states in handwritten form as follows; '*Found meter 11562247 at site*' and another handwritten note stating '*Meter Replacement U1274556← 11562247*' which had a reading of 000387 units. This Notice to Consumer was delivered by Kimala Sula Danda, MAT on 22/06/2012. This is surprising, in that a day earlier, 21/06/2012 the Disconnection Notice "**CE 2**" delivered by another set of the Respondent's

servants against the same account showed the meter No. **11561754**, with 000387 units. It is not very plausible that within a space of one day, the premises had two different meters, reading the same unit numbers. It is also noteworthy that the Respondent's servants had on 20/04/2012 written on another 'Notice to Consumer' (CE23) that 'Meter No. at site is different from Meter No in the system and also stated that Meter No. 11561754 is in the system while Meter No. 11562247 was the meter at site! And that the said Meter No. 11562247 read 370 units on that 20/04/2012. This is in reference to exhibit '**CE 23**'.

We also note from **CE 22**, a tax invoice generated by the Respondent against the Complainant's account No. 200395063 and meter No. 11561754 on 11/01/2011 that the Respondent's servant one Katyaba had handwritten on it to the Branch Manager, Wandegeya that there was a problem on that account arising from the meter at site. In the said handwritten note, he suggests that the old meter be replaced with a new one to resolve the problem forever. The old meter is **No. 11561754**, the same number also stated on **CE 2** on 21/06/2012. The Meter earlier found on the site on 20/04/2012 is however No. **11562247**, presumably the new meter (**CE 23**). **CE 23**; a 'Notice to Consumer' dated 22/06/2012 however bears No. **11562247** as the number of the meter on site. This leads us to the belief, that the Respondent itself did not have proper or correct facts on the meter which was serving account No.200395063 at the time it disconnected the Complainant on 21/06/2012; further cementing our belief and conclusion that the disconnection was wrongful.

Complainant also presented as exhibit a 'Disconnection Order' dated 22/08/2012 admitted as exhibit '**CE 4**'. It had written on it '*Meter Number* *U11561754 replaced by U1274556*' and that Complainant was in arrears of SHS 2,763,159/=. On top of the 'Disconnection Order' '**CE 4**' is a hand written instruction to one '*please reconnect and have this new meter tested, dated 23/08/2012*' We noted that '**CE 4**' does not make mention of **Meter No. 11562247** earlier said to be on the Complainant's site as opposed to the **Meter No. 11561754** which the Respondents claimed to be in their system. By 22/08/2012, the Respondent's document '**CE 4**' is talking of Meter No. **U11561754** and does not indicate as to when it was replaced nor the reason for its replacement nor what happened to yet another Meter No. **11562247**. Our presumption is that the replacement took place

on 22/08/2012, the date of the Disconnection Order '**CE 4**' and the instruction to test the new meter is consequently dated 23/08/2012. The amount for which this disconnection is made is that which was debited as April 2012 bill of **SHS 2,747,505.64/=** on '**CE 26**'. This bill had on **CE 26** by 26/07/2012 accumulated to **SHS 2,763,158.93/=**, the figure appearing as arrears as of 22/08/2012 in Disconnection Order '**CE 4**'. Studying the record in **CE 26**; 'the Customer Information Sheet', this figure of SHS 2,763,159/= the basis of the Disconnection order '**CE 4**' dated 22/08/2012 was also reversed on 11th April 2013 as per the record in **CE 26**. There was thus no factual basis for the disconnection on 22/08/2012. We are, as a result of the above analysis of testimony and records convinced that the disconnections as illustrated above were unjustified and wrongful. The Customer Meter Testing Form exhibited by the Complainant as **CE5** in respect of tests carried out on 4/09/2012 were in respect of **Meter No. U1277556**, the newest installed possibly by the Respondent on 22/08/2012 and would have no relevancy to disconnections carried out before that date, except to confirm that the metering system before that date was faulty all along, thus possibly the necessity for this new meter that was installed about August 2012. (See CE4) to replace meter No. U11561754, although the meter at site on 22/06/12 was No. 11562247 (See CE3). Note however that Disconnection Notice CE2 showed that the meter on a day earlier, the 21/06/12 was No. 11561754 and not No. 11562247 stated on the following day 22/06/2012.

It is intriguing also that Complainant was required by the Respondent as per Exhibits '**CE 7**' 'a deed of acknowledgement of debt and undertaking to pay' dated 06/11/2012 to acknowledge a purported debt SHS 2,899,331 against her account No. **200395063**. She was further on 13/11/2012 required by a letter from the Respondent's lawyers, Kampala Associated Advocates to pay an outstanding sum of SHS 2,796,982/= purported to be owing to the Respondent as of November 13/11/2012. We observed that this sum was as per the records **CE 26** - 'the Customer Information Sheet' reversed on 11/04/2013 by a reversal of SHS 2,811,636.15/= to leave an outstanding balance of SHS 49,582.26 and another reversal of SHS 7,591,53 on the same date to leave a balance of SHS 46,219.85 outstanding. The demand from the lawyers was therefore based on erroneous billing which was in fact later reversed, and if it was as is the fact that the

disconnection was based on that outstanding sum; then it was also unjustified and wrongful.

The next issue is whether the Respondent wrongfully levied a fraud bill/bills on the Complainant.

The three instances considered in the foregoing represent the three instances which we believe are the instances when the Complainant was fraud billed. The instances are on the 14/09/2009 when she was served with a single bill/Disconnection Notice (**CE 18 & CE 19**) of SHS 1,571,828/=, said to be arrears outstanding. This figure does not appear on exhibit '**CE 26**' against or about the date of 14/09/2009, but it is clear from **CE 26** that it is a netcomposite sum arising from among others, a large bill of SHS 1,000,003.04/= and that of SHS 153,291.20/= imposed on 17/03/2009 and 21/April/2009 respectively. These two figures were however subsequently reversed on 8/07/2010 as can be and has been observed from **CE 26**. The same scenario played out in respect of an entry of SHS 2,811,635.15 on 27/04/12, referred to as an April 2012 Bill . This sum was similarly reversed on 11/April 2013 (a reversal of SHS 2,811,636.15) together with a reversal of the sum of SHS 7,591.53 on the same date which previously had been imposed on 29/05/2012 as the May 2012 bill. (See **CE 26** page 2 &3).

A sum of SHS 2,747,506 was stated to be owing on 21/06/2012 and a Disconnection Notice **CE 2** was served on the Complainant on 21/06/2012. This bill is part of the composite bill which is later reversed on 11/04/2013 as per the record on page 3 of **CE 26**. That same running /cumulative/composite bill formed the basis of the Disconnection Notice **CE4** dated 22/08/12 for SHS 2,763,159/= which as stated above was reversed on 11/04/2013. The fact that the Respondent subsequently reversed these fraud bills is an answer to this issue. The Respondent wrongfully levied fraud bills on the Complainant. Not to be ignored is the additional factor that the Respondent's own witness acknowledged in writing that there was a fault with their billing system in respect of the Complainant and recognized the need to change the Complainant's meter – See **CE22** which bears Katyaba's handwritten remarks to the above effect. Katyaba was Respondent's witness "**RW 1**" and admitted writing the remarks on **CE22**.

A 'Notice to Consumer' was admitted as **CE23**, not having been objected to by Counsel for the Respondent. This exhibit had on it, handwritten notes by the Respondent's servants who served it on the Complainant to the effect that; *'Meter Number at site is different from the Meter Number in the system'*. Further, a document entitled 'UMEME Customer Meter Testing Form' dated 4/09/2012 exhibited as **CE5** by the Complainant indicated that the meter against the Complainant's account No. 200395063 which underwent a performance test was numbered **U1274556**. This Meter Number is different from the two meter numbers identified by the Respondent's servants on **CE23** dated 20/04/2012; as Meter No. 11562247 – Meter on site and Meter No. 11561754, the meter number in the Respondent's system. No explanation was offered by the Respondent of how these differences in meter numbers, on the same account number 200395063 came to occur. This cements our belief that the Respondent did not itself know the actual state of its metering equipment and thus the Complainant's consumption of electricity and therefore could not rightly/justifiably impose any fraud bill. The bills were in the instance shown above were all later reversed and therefore were wrongfully levied in the first instance.

The next issue for our consideration was whether the Respondent committed trespass upon the Complainant's land at Namere.

Complainant claimed that she owns an untitled piece of land (Kibanja) at Namere Zone in Kawempe. She claimed that during the supply of electricity to her neighbours; the Respondent without her consent planted electric poles on her land and passed transmission lines over her plot. She claimed that in the process, the Respondent's servants cut her crops, which included a jack fruit and eleven (11) banana stems. She presented as exhibit **CE12** a letter dated 16/01/2014 from the District Manager of the Respondent - Wandegeya to her. The letter stated that the Respondent had connected one Mr. Tomorrow Johnson to their grid after presentation of a way leaves clearance form signed by one Esther Kwagalakwe and endorsed by an L.C.1 Official on 9/11/2013. But that after receiving her complaint, the Respondent had disconnected the customer and the matter was to be investigated further. She also presented exhibit '**CE13**' the Respondent's 'Compensation Assessment Form' dated 15/05/2015 that the property being assessed was owned by Nalongo Katende, the Complainant. **CE13** indicated that

the property was located at Namere Zone L. C 1 Village in Kawempe II Parish in Kawempe Sub County. The form indicated that one (1) mature jack fruit tree and four (4) mature banana clumps were to be compensated. **CE13** was signed by one Muguluma, described as an UMEME Assessor, and the Complainant. These were witnessed by one Nalubega Mpuwa an L. C. 1 Official of Namere Zone, Kawempe II Parish among other witnesses. Complainant presented a valuation report admitted as exhibit '**CE 24**' dated 12/10/2016 prepared by M/S Stanfield Property Partners, prepared for the purpose of assessing what amount and for what property was compensation due to the Complainant. The said valuation report was stated by the said Stanfield valuers, to be based on their findings together with the record of UMEME's Compensation Assessment Form **CE13**, and the application of Kampala City's Compensation Rates, which put the value of crops destroyed at Namere at SHS 605,000/= and a disturbance allowance at SHS 181,500/= being 30% of the value of the compensation for the crops.

The Respondent on their part denied trespassing on the claimant's property. The grounds for the denial were that Complainant did not furnish any documentary evidence to show that she was the owner of the property at Namere. Secondly, that it swiftly removed the lines that passed the Complainant's land upon receipt of the Complainant's complaint dated 23/12/2013, that heavy lines had been passed over her land without her consent to supply one Tomorrow Johnson. Respondent argued that therefore there was no trespass. Respondent also argued that it had been given way leaves by one Esther Kwagalakwe which was endorsed by the L. C to connect Mr. Tomorrow on its grid. Respondent cited the same letter **CE 12** to support its assertion that it rightfully acted to enter the Complainant's land, and in any case moved to remove its lines.

The tribunal agrees with the Respondent's written submission that; Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes or portends to interfere with another person's lawful possession of that land. Although the Respondent in its written submissions denied trespass, arguing that Complainant did not avail evidence of ownership of the Kibanja at Namere but the same Respondent wrote to her the letter **CE 12** in which it seeks to assure the Complainant that after receiving her complaint; it disconnected the customer who had been connected by wires over her land thereby implicitly acknowledging her ownership, occupancy or possession of the kibanja at Namere. Additionally the

Respondent in its compensation Assessment Form dated 15/05/2015 exhibited as **CE 13** states that Nalongo Katende, who is the Complainant is the owner of the property at Namere Zone Kawempe II Parish, Kawempe Sub County. CE13 has the particulars of the property assessed and ends with the signature of the Complainant as the customary owner/Tenant witnessed by one Nalubega Mpuma as L. C. 1 Chairman/Representative with an L. C. 1 Namere Zone, Kawempe II Parish Zone Stamp affixed thereto. We find it ingenious and difficult to accept the denial of the Respondent at this point of time that the Complainant is not the owner or in possession of the property at Namere. The Respondent does not in any case deny that Complainant was in possession of the land/Kibanja.

The Respondent in a letter exhibited by the Complainant as **CE12** to illustrate the lack of her consent to the Respondent; and also referred to by the Respondent to show that it received consent for way leaves in order to connect Mr. Tomorrow to its grid, states that the way leave clearance form was signed by a one Esther Kwagalakwe. Kwagalakwe was never presented before the Tribunal to testify as to the capacity that entitled her to grant way leaves over the land in issue at Namere; neither was it stated anywhere that she was in occupation/Possession or had any proprietary interest in the land owned or occupied by the Complainant in Namere. It is no wonder that the Respondent's District Manager, Wandegeya in the Same **CE12** states that after receiving Nalongo Katende's complaint, they went ahead and disconnected the customer, Mr. Tomorrow whom they had earlier connected to their grid. While we agree with the Respondent that the tort of trespass to land consists of the act of: entering upon land in the possession of the Complainant; but it is also the placing or projecting any object on or over it and in each case without lawful justification or consent of the Complainant. Refer to *Kelsen V. Imperial Tobacco Co [1957] 2, Q.B 334*, Wherein, placing a sign projecting over the plaintiff shop' was held to constitute trespass. **CE12** clearly admits that there was projection of electricity wires over Nalongo Katende's land or that which she was in possession in order to connect Mr. Tomorrow to their grid. The Respondent pleads that they received consent from MS. Kwagalakwe, but in no anyway is Ms. Kwagalakwe shown to be in possession, occupation or have interest in the land/Kibanja claimed by Nalongo Katende. No wonder the Respondent removed the connections upon Nalongo Katende complaining. On the other hand Nalongo Katende, not only claimed ownership but also possession of the same, on which

she had crops which the Respondent acknowledged and assessed for compensation, as can be seen from CE13. Actual possession as an owner is presumptive proof of property, and is sufficient against a mere wrongdoer who cannot show any better title or authority; refer to: *Delaney V. T.P Smith Ltd* [1946] K.B 397

In conclusion in respect of this issue, we find that Teddy Nalongo Katende was the presumptive owner and in possession of the parcel of land or 'Kibanja' located at Namere Zone L.C.1, Kawempe II Parish, Kawempe Sub county; the subject matter of this issue. We further find that the Respondent in or about late 2013 without the consent of the Complainant wrongfully entered upon the said property or Kibanja in that the Respondent did not obtain Complainant's consent to do so and erected on to it electricity poles and or passed electricity wires over the said 'Kibanja' or property in order to connect one Mr. Tomorrow to its grid. We observe that the erections of wires over the property was removed after the Complainant made a complaint in writing said to be dated 22nd December 2013 to the Respondent. (See CE12).

We considered issues No.4 under the heading; Whether the Complainant is entitled to any remedies.

The Respondent's submission is that the Respondent's actions were in all circumstances justified since the Respondent was entitled to the outstanding arrears for the power consumed. The Respondent prayed that the tribunal dismisses the Complainant's claim and awards costs of this suit to the Respondent. The Complainant on the other hand in her written submissions sought;

1. Special damages of;
 - SHS 5,000,000 for her land that was allegedly damaged, depreciated and alienated from her
 - SHS 500,000/= for transport expenses over the 4 years she allegedly spent to obtain a solution from the company
 - SHS 1,800,000/= expenses on obtaining valuers and property assessment services
 - SHS 500,000/= being expenses to furnish lawyer to give legal opinion and drafting of expected income.
2. - SHS 1,000,000/= punitive damages for recklessness and impunity

3. - General damages of SHS 10,000,000/= for pain and suffering
4. - Costs of the suit and;
5. - Interest in the suit

The above are the remedies that were sought by the Complainant as stipulated in her written submissions.

From our foregoing assessment of the evidence furnished by both parties; we came to the conclusion that the Respondent wrongfully disconnected the Complainant at her Kanyanya premises in all the instances cited for the reasons that we have given in our discussion above but principally because in all instances where the Respondent disconnected the Complainant for purportedly owing various sums of money stipulated in the Disconnection Notices, these amounts were subsequently reversed. We have consequently also concluded the Complainant was wrongfully fraud billed in all the instances as illustrated by the evidence before the tribunal. We have also come to the conclusion that during the replacement of an old electricity pole with a new one in 2013/14, the pole that was being replaced hit the Complainant's house at Kanyanya, causing damage to the roof and a vertical crack to the wall of the said house. Although we did not visit locus, yet we were convinced by the Complainant's oral testimony during her testimony in chief, and cross examination by Counsel for the Respondent, that she was telling the truth about the state of the house, the type of damage and the cause of the damage. Her testimony was well augmented by the reports on pages 2, 3, and 4 of the Surveyors Report **CE24**, prepared by Stanfield Property Partners on 12 September 2016. The photographs therein marked by the tribunal as (a), (b), (c) show the nature of damage that occurred to the Complainant's house on the roof and the crack in the wall resulting from the electric pole which was being cut, falling on the roof of the Complainant's house. No evidence was brought to controvert the Complainant's claim of ownership of the house shown in photograph (a) which she claimed was the house damaged nor any to contradict her claim of damage to the roof and wall, as shown in photographs "b" and "c" on page 4 of report **CE24**, nor that these damages were caused by an electric pole that fell on the house in the process of being cut by the Respondent. We find that Complainant's house was damaged in the manner she claimed and described by the Surveyor's report and as illustrated by the photographs referred to above.

The evidence of the Quantity Surveyor presented as "Priced Bills of Quantities for the proposed renovation of the Residential house for Ms. Babirye Teddy Katende, Nalongo" contained in exhibit **CE24** was also admitted in evidence as part of the Surveyor's report, giving estimated charges of repair of the Complainant's house. The estimate was similarly not objected to nor controverted by the Respondent. The estimates dated 20-09-2016 were put at SHS 2,394,875/=. It was stated in **Eldam Enterprises V. SGS (U) Ltd & others [200] HCB Vol.1, 37** a Court of Appeal holding that *"where evidence is not challenged in cross examination, it must be admitted as true and this refers to Cross-examination on evidence in Chief. The purpose of Cross examination is to test the veracity of the witness on his/her evidence in Chief"*. The tribunal did not observe any serious challenges if any, to the Complainant's evidence in Chief as to the ownership of the house in question at Kanyanya, nor to the claim that it was hit by an electric pole which the Respondent was allegedly pulling down or that the estimated cost of repairing the roof and walls, was not called for or was unrealistic or exaggerated. The tribunal consequently awards SHS 2,394,875/= to the Complainant against the Respondent as estimated cost of repairs in CE24, for repair of the damage caused to her house at Kanyanya. It be noted that the valuation report **CE24** was not tendered in by the author but by the Complainant as the person who instructed the valuers and received the report from them; the Respondent's Counsel during the proceeding however expressed no objection to its admission as an exhibit. The Complainant also furnished receipts Nos. 743 and 006 which she said were issued by the property valuers, Stanfield Property Partners, to her in acknowledgement of her payment of valuation fees, amounting to a total of SHS 1,000,000/= (Shillings one million only). This was for valuation carried out at her Kanyanya and Namere properties respectively. These were admitted as Complainant's exhibits **CE27** for SHS150,000/= and **CE28** SHS 850,000/=:, thus a total of SHS 1,000,000/=. The Respondent did not challenge the authenticity of the receipts nor the amounts on them. The Tribunal in the circumstances awards the Complainant this sum of SHS 1,000,000/= as fees paid to the valuers, to prepare the valuation report for use in the proceedings.

Following the Respondent's Compensation Assessment Form **CE13**, the tribunal accepts the said Surveyor's opinion that the compensation due, for the damaged property at Namere, particularly a jackfruit tree and 4 banana clusters, the sum of

SHS 605,000/= is appropriate compensation for the damaged/destroyed crops as assessed by the Respondent and quantified in monetary terms using what was presented in CE24 as *"Approved Compensation Rates for Kampala District for the year 2016/2017"*, together with SHS 181,500/= for disturbance.

The Complainant claimed a sum of SHS 500,000/= as transport expenses over the four years that she claimed she spent pursuing redress for her Complaint.

Complainant stated that taxis and 'boda bodas' cyclists (motorcycles that carry passengers at a fee) do not issue receipts, so she could not furnish the tribunal with receipts for her many journeys. We recognize the difficulty the Complainant faces in this respect as it is common knowledge that commuter taxis and motorcycle taxis in Uganda don't issue receipts for money paid to them. We however recognize that she came several times to the tribunal to file her pleadings and to attend proceedings and called on offices of the Respondent in the past; a fact proved by Mr. Katyaba's admission in evidence that he met the Complainant at his offices several times. Refunds or travel expenses claims incurred by a litigant are ordinarily taxed as a constituent of costs. The Tribunal however recognizes the Complainant's limitations, in that she is self-represented and appeared to be largely semi illiterate. This imposes great limitations upon her. In pursuit therefore of fairness and natural justice, the tribunal awards SHS 300,000/= to the Complainant to compensate her for the travel expenses in the pursuit of a remedy against the Respondent in the period of four years, to date. Although special damages must be strictly proved, they need not be supported by documentary evidence in all cases See; **Kalemera & Ors V Unilever (U) Ltd & Anor [2008] HCB 134**. We believe that this is such a case when documentary evidence may not of necessity be furnished to support the claim.

The Tribunal declines to award the SHS 500,000/= claimed for expenses to lawyer to give legal opinion and drafting of expected income. The lawyer is not named nor is any lawyer on the tribunal record as representing the Complainant nor is there any evidence that such payment was ever made to a lawyer, as would be expected in respect of such payment.

The tribunal has not recognized/found any circumstance in this case that warrant or call for award of punitive or exemplary damages. The purpose of punitive damages are to punish the defendant for outrageous misconduct and to deter the defendant

and others from similar misbehavior in the future. Some of the terms that characterize conduct justifying these damages include *bad faith*, *fraud*, *malice*, *violent*, *wanton*, and *recklessness*. We have not found or inferred any of these aggravating circumstances in any and all of Respondent's actions or conduct. The tribunal declines to award punitive damages.

General damages are what may be presumed by law to be the necessary result of the defendant's wrongful act. General damages are noneconomic damages as pain and suffering and emotional distress and others of similar nature. The plaintiff may not prove that he/she suffered general damages; it is enough if he/she shows that the defendant owed him/her a duty of care which he/she breached. "*Refere to Kalemera & Ors V Unilever (U) Ltd & Anor [2008] HCB 136*."

To apply to this case the word of Bamwine J as he was the; ' In the instant case Teddy Nalongo Katende, the Complainant demonstrated that the Respondent owed her a duty of care in all instances and that they breached it. The Complainant consequently suffered inconvenience and emotional distress or anguish as a result of wrongful billing, wrongful disconnection, and trespass unto her property at Namere, which justifies the award of general damages.

General damages are at large and not easily quantifiable; the quantum is thus within the discretion of the tribunal. Evidence having been led by the Complainant that she suffered loss, inconvenience and emotional distress; the tribunal awards her general damages of **SHS 13,000,000/=** (Shillings Thirteen million only) against the Respondent for the loss, suffering and anguish she suffered as a result of the above said wrongful actions ie wrongful billing, and disconnection and, trespass.

Section 27 of the Civil Procedure Act Cap 71 stipulate that costs follow the event and in this instance the tribunal awards the Complainant costs against the Respondent. In summary; the tribunal has found for the Complainant on all issues and has awarded against the Respondent;

- (i) SHS 2,394,875/= as estimated cost of repair of her house at Kanyanya.
- (ii) SHS 1,000,000/= refund of fees paid to valuers.
- (iii) SHS 786,500/= compensation for crops destroyed at Namere and disturbance.

- (iv) SHS 300,000/= transport expenses, while pursuing a remedy against the Respondent.
- (v) SHS 10,000,000/= general damages for loss, suffering, inconvenience and mental distress, resulting from wrongful disconnection, and billing and SHS 3,000,000/= for trespass at Namere.

Interest will apply at the rate of 24% per annum on the specific amounts awarded above and on the general damages from the date of judgment to the date of full payment.

We so Order.

Dated at Kampala this 03 day of August 2018.

Charles Okoth-Owor

.....
Chairperson

Anaclet Turyakira

.....
Vice Chairperson

Eng. Dr. Moses Musaazi

.....
Member