

THE REPUBLIC OF UGANDA
IN THE ELECTRICITY DISPUTES TRIBUNAL
UNDER THE ELECTRICITY DISPUTES TRIBUNAL (PROCEDURES)
RULES, 2012

EDT APPLICATION NO.1 OF 2011

IN THE MATTER OF

DAVID OBOT :::::::::::::::::::::::::::::::::::::: **COMPLAINANT**

AND

UMEME :::::::::::::::::::::::::::::::::::::: **RESPONDENT**

JUDGMENT

*Before: Charles Okoth Owor - Chairman, Anaclet Turyakira-Vice Chairman,
Moses Musaazi - Member*

The Complainant Mr. Obot David filed a complaint in this tribunal seeking compensation on account of illegal disconnection by the Respondent and also sought compensation for loss of income on account of the alleged unlawful disconnection of his power supply.

In its response the Respondent contended that the disconnection was lawful and proper.

At the scheduling conference, the following facts were agreed:

1. The Complainant owned a milling plant at Kacungu, Lira District
2. The fact of supply of electricity by the Respondent to the Complainant at his mill
3. Disconnection of the electricity by the Respondent on 7th March 2007.

The parties disagreed on the following:

1. That the disconnection of electricity to the Complainant's mill by the Respondent was illegal
2. That the Complainant lost earnings and in the quantum claimed.

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By K. Hennet
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Consequent to the pleadings, agreed and disagreed facts, the parties framed the following issues for determination by the tribunal:-

1. Whether the Complainant's mill was illegally disconnected from use of electricity by the Respondent and/or officials or the agents,
2. Whether the Complainant is entitled to any special damages claimed and if so whether the quantum claimed by the Complainant is justified.
3. Whether the Complainant is entitled to any costs.

In support of his case the Complainant called 5 witnesses. CW1- Obot David, testified that he owned a grinding mill at Kacungu, Arwata Sub-county, Dokolo District.

That on 7th March 2007, he received information from his employees that the officials of the Respondent had disconnected his mill. He reported the matter to police at Jinja Road Police Station and, since he was in Kampala, he was advised to contact the Respondent's office at Lugogo Loss Reduction Unit.

He said the alleged reason for disconnection according to the Disconnection Notice was "*meter not indicating voltage and current on REd (A) phase and meter not registering one phase.*"

The Witness denied the veracity of the allegations given for disconnection and said he was paying all his bills and had been disconnected without giving him an opportunity to explain. He said he was requested to pay UGX.2,469,109/= as energy loss which he refused. He said the Respondent had also not given him a formal bill for the amount. He said he was reconnected on **1st December 2011** when the matter was already before the tribunal.

He said as a result of disconnection, he lost UGX.135,151,661.15 which he now claimed from the Respondent.

He also prayed for compensation for loss of unspecified income, UGX.60,000/= paid to police for a police report, expenses of travel at UGX.1,101,000/=. He said before disconnection he made a gross income of UGX.1,816,582/= and said his net profit was UGX.1,100,000/= for the year 2006.

The other Witnesses for the Complainant was CW2 – Barasa George, a police officer who investigated the matter and made a report which was admitted in evidence as CEX 6.

CW3 – Ogwang Abel who worked at the Complainant’s mill as a Stores Assistant and told the tribunal that he was at the mill at the time of disconnection and that the Respondent took away the meter, allegedly because it had a problem.

CW4 – Jacob Ochola an Accountant with JW & Partners an audit firm. He was engaged by the Complainant to prepare an audit report for the year 2006. His audit showed that the Complainant’s mill made net profit of UGX.1,100,000/= in the year 2006.

CW5 – Obot Jane, wife of the Complainant was the Supervisor of the mill. We doubt her evidence adds value to the resolution of the issues, although she too confirmed the disconnection and supplemented CW1’s evidence that the bills for the mill were always paid regularly.

The Respondent produced one Witness RW1 – Mr. Denis Wasswa. The witness said he knew the Complainant as the Respondent’s customer and confirmed the disconnection of 7th March 2007. He said the customer in February had a debt of UGX.333,418/= and paid UGX.170,000/= leaving a balance of UGX.163,418 /= of the February bill. He challenged the Complainant’s assertion of profit but admitted that disconnection can lead to loss. He also admitted that the Complainant’s business was profitable since it had retained earnings.

The parties through their respective Counsels filed written submissions.

Given the above pleadings and evidence, the tribunal has gone ahead to determine the issues as follows:

Issue No. 1: Whether the Complainant’s mill was illegally disconnected from use of electricity by the Respondent and/or officials or the agents.

It was contended by the Complainant’s Counsel that the disconnection was illegal. Counsel submitted that the burden of proof lay on the Respondent to prove power loss which according to him the Respondent failed to prove. Counsel also said there was no evidence of meter default.

On her part, the Respondent’s Counsel contended that the disconnection was legal.

We agree with the legal proposition stated by Counsel for the Complainant that “he who alleges must prove.” This is the position under Sec.100 of the Evidence Act Cap.6. Put into context, the purported reason for disconnection of the Complainant’s power was according to exhibit PE1 – Notice to consumer “meter

not indicating voltage and current...” and “meter not registering one phase.” This we think, is a possible indicator of what is commonly known as ‘meter bypass; if at the material times a customer is actually consuming power but no measurements of consumption are taking place or there is evidence of a “by pass.”

The notice was delivered by “GE” whose title is indicated as LCC.

As pointed out the only witness for the Respondent was an accountant. Although the reason for disconnection was meter bypass, the witness did not lead any evidence to prove bypass resulting in energy loss but instead the witness said the Complainant had outstanding payment for which he was disconnected, i.e. failure to pay outstanding bills.

Only one bill was tendered in evidence as exhibit 1 (PE7). However, the ‘Disconnection Notice’ does not refer to this bill to confirm that it was the outstanding bill that was the basis of the disconnection. The tribunal was consequently not satisfied that indeed the Complainant owed unpaid bills to the Respondent and that the unpaid bills were the reason the Complainant was disconnected.

As for the bypass and energy loss, there was no attempt by the Respondent to produce the person who purportedly discovered the alleged bypass and no reason was given for such failure. The witness RW1, Denis Wasswa did not testify as to power bypass and consequent energy loss. The allegations of the Respondent thus remained largely unproved.

Against the above evidence, the conclusion of the tribunal is that the Respondent has failed to show to the tribunal the justification and to prove the legality of their disconnection and the same is declared illegal.

Issue No. 2 & 3

The Complainant’s Counsel discussed the 2 issues together. We believe he was right as the two issues are related. We shall also resolve them together.

Having resolved that the disconnection of the Complainant’s power supply was illegal, we have no hesitation in concluding that the Complainant is entitled to compensation.

It is an agreed fact that the Complainant operated a mill. It is also an agreed fact that the electricity supply was disconnected. We have resolved that the disconnection was illegal.

The Complainant said that as a result of the disconnection, he lost income as he was no longer able to carry out his milling business both for customers and his own farm. This went on for 4(four) years, seven months and 27 days.

RW1- Denis Wasswa for the Respondent in his evidence while under cross examination stated;

“The nature of the stock is perishable which causes risk of loss to the company in the event it is damaged. The witness also said “Mr. Obot’s core business is milling of maize, cassava and millet. Disconnection of power leads to loss of such business,” he added

“By saying the business is not profitable I don’t mean it was not making profit. It was making profit but not in a sustainable way. Given the nature of the business, disconnection would affect the business. I think this was profitable business if it is able to get receivables.”

This evidence coming from the Respondent’s witness confirms claims by the Complainant that he had a profitable business and that the same was affected by the illegal disconnection. There is therefore no doubt that the Complainant is entitled to Compensation for his loss arising out of illegal disconnection of his power supply by the Respondent.

Under this issue, the Complainant prayed for several remedies.

(a) **Special Damages:**

(i) **Claim for ugx.135,151,661.15 as loss of profit:**

The Complainant in his evidence claimed he was making a net profit of ugx2,574,543/= The same figure appears in the audit report CEX3. However in the same report p.3 the Complainant’s report said the net profit as of 31.12.2006 was ugx.1,100,000/=.

Although the Complainant says the amount of ugx.1,100,000/= was an error which he later corrected, no evidence is available for such correction. The figures represent a discrepancy which this tribunal will not overlook.

Since the audit report is based on the proprietors’ report and the two are giving contradicting figures, the tribunal declines to rely on the audit report for proof of ugx.135,151,661.15

We think the figure of ugx.135,151,661.15 has therefore not been proved satisfactorily to the tribunal. Nonetheless the tribunal is satisfied that the

Complainant suffered loss arising from the illegal disconnection by the Respondent and the same shall be considered while assessing general damages.

(ii) Ugx.60,000/= as costs of police report.

A receipt of ugx.60,000/= i.e PID was produced in evidence and not rebutted. This item is allowed.

(iii) Ugx.1,640,000 for transport

There were receipts availed/furnished to prove this claim. These receipts were for identification. They were never identified. This item is disallowed.

General damages

The general principle of law is that general damages are what may be presumed in law to be the necessary result of the defendant's wrongful actions.

In Sylwan Kakugu Tumwesigye Vs. Trans Sahara International General Trading; CC No.95/2005, His Lordship Justice Kiryabwire held that "*General damages is such as the law presumes to result in the infringement of a legal right. It is the natural and probable consequence of the breach. The plaintiff (read claimant) is required only to assert that such damage has been suffered but need not be strictly questioned.*"

We also wish to refer to Makubuya E. William t/a Polla Plast V Umeme HCCS No. 534/2012, where Christopher Madrama Izama J; held that "*General damages are compensatory i.e. that an innocent party is to be placed so far as money can do so, in the same position as if the contract had been performed. The principle is to be applied in a claim of general damages is the common law doctrine of restitution interregnum i.e. that the plaintiff must be restored as nearly as possible to a position he or she would have been in had the injury complained of not occurred.*"

Since we have held that the acts of the Respondent were not shown to be justified, thus wrongful, and the disconnection of the Complainant's power supply was illegal; we are satisfied by the evidence of the Complainant and that of his auditor CW4 – Jacob Ochola that the Complainant suffered substantial loss of income, as a result of the disconnection.

In assessing the amount of loss we take into account the following:-

1. The evidence of CW4, the Auditor that the Claimant earned an estimated ugx1,100,000/=.
2. The fact that the Claimant's evidence omitted vital expenditure like tax, salaries, payment for utilities, etc.
3. Possible mechanical breakdown of machinery
4. Market fluctuation of items
5. Other vagaries associated with business.

In our view a sum of ugx.30,000,000/= is sufficient to compensate the Complainant. We award the same.

In summary we make the following orders:-

1. The disconnection of the Complainant's electricity supply was illegal.
2. The claim of ugx.135,151,661.15 as special damages is disallowed.
3. A sum of ugx.1,640,000/= allegedly for transport is disallowed.
4. A sum of ugx.30,000,000/= is awarded as general damages/ compensation for the loss of income.
5. The Complainant is entitled to costs.

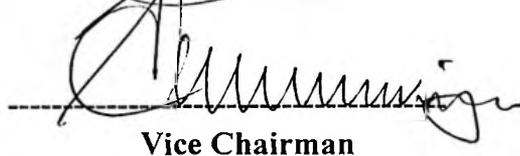
So we order.

Charles Okoth Owor



Chairman

Anaclet Turyakira



Vice Chairman

Moses Musaazi



Member

14/2/2018