

THE REPUBLIC OF UGANDA

IN THE ELECTRICITY DISPUTES TRIBUNAL AT KAMPALA

THE ELECTRICITY DISPUTES TRIBUNAL (PROCEDURE) RULES, 2012

COMPLAINT NO. EDT/10 OF 2020

EDWARD BANDA

Suing as the Administrator of the

Estate of the late Eldad Banda COMPLAINANT

VERSUS

ATTORNEY GENERAL RESPONDENT

Before :

Charles OkothOwor Chairman

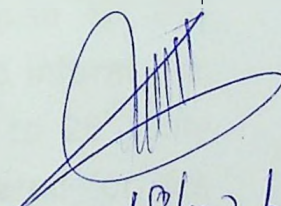
Anaclet Turyakira Vice Chairman

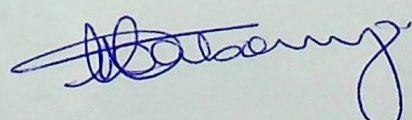
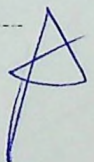
Harriet Wanyoto Member

JUDGMENT

The Complainant filed EDT NO.10 of 2020 seeking the following orders:

- (a) A permanent injunction restraining the Respondent Rural Electrification Agency ("REA") or their contractors, agents, employees, or anyone claiming under them from trespassing, alienating, wasting away or in any way dealing with the suit land,
- (b) A restoration order of the suit land
- (c) General damages
- (d) Aggravated damages


18/03/2024

(e) Interest on (c) and (d) from the date of the award until payment in full.

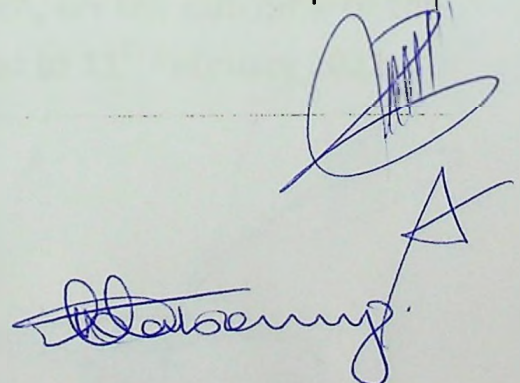
(f) Further or alternative orders

(g) Costs of the suit.

It is alleged in the complaint that sometime in November 2019, Rural Electrification Agency (hereinafter referred to as "REA"), acting through its employees, contractors, and or its agents illegally and maliciously damaged the suit land by trespassing on it whereby they cut down pine trees, dug deep holes and posted poles in these holes without the Complainant's consent. That REA subsequently instituted a 132 KV Voltage three phase power line on the land in contempt of a temporary injunction issued by the Tribunal in Misc. App. No. EDT 002 of 2020.

This matter first appeared before the Tribunal on 17th July 2020 in the presence of Frank Kwesigabo, Counsel for the Complainant and in the absence of the Respondent or its representative. Counsel for the Complainant informed the Tribunal that the Respondent was served on 7th July, 2020 but had not filed its response although there was evidence that the Respondent had been served. Counsel applied to proceed exparte.

The Tribunal declined the prayer and instead extended the time within which the Respondent should file its response to the complaint. The Complainant's Counsel was directed to inform the Respondent. The matter was accordingly adjourned to 28th July 2020. On that day Counsel Albert Byamugisha appeared for the Complainant/Applicant. Nobody appeared for the Respondent although there was an affidavit of service.

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Counsel Byamugisha applied and was granted leave to proceed with application for a temporary injunction vide MA EDT No.022 of 2020; which injunction was granted in a ruling delivered by the Tribunal on 6th August, 2020.

The matter appeared again on 19th September 2020. Mr. Byamugisha who appeared for the Complainant informed the Tribunal that the Respondent had been served and there was an affidavit of service. It was noted that with consent of Counsel Byamugisha, the Tribunal again extended time within which the Respondent was to file a response to the complaint within 15 days from the date of the order.

The Tribunal gave further directions in respect to filing of pre-trial documents, namely the joint scheduling memorandum, trial bundle and witness statements. The matter was adjourned to 2nd November, 2020 for hearing.

It is not clear what happened on that day but the matter appeared on 25th November, 2020. On that day, only Mr. Byamugisha attended. He informed the Tribunal that he had received a telephone call from a one Musota Brian – a State Attorney, who informed him that REA intended to send their agent to the affected land to verify the Complainant's allegations. This was to be done on 4th December, 2020. In view of the above, Mr. Byamugisha prayed for an adjournment which was granted for 17th December 2020.

On 17th December, 2020, again only Mr. Byamugisha attended and availed the Tribunal evidence of service. He further said Mr. Musota who was allegedly in Agago on official business had requested for more time to receive instructions from REA, on the outcome of the visit. The matter was accordingly adjourned to 11th February 2021.

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On 11th February 2021 again only Mr. Albert Byamugisha attended and this time the State Attorney was alleged to be handling a Presidential Petition and that he had confirmed he had not received the verification report of the visit from REA. The two Counsels reportedly agreed that Mr. Byamugisha applies for an adjournment to 12th April, 2021. The adjournment was granted. On that day Mr. Musota appeared and informed the Tribunal that Mr. Byamugisha had a matter in High Court, Civil Division. The matter was again adjourned to 19th March, 2021 at 10:00am. In the meantime, the parties were to share a report of the Chief Government Valuer, which would form a basis of negotiation by the parties with a view to settling the same amicably.

The matter was adjourned to 19th May, 2021 for parties to report on the outcome of their negotiations. On 19th May, 2021. Mr. Byamugisha appeared together with Mr. Musota Brian, State Attorney. By that date, the Respondent had not filed its response.

Mr. Byamugisha having consented to late filing, the Respondent was allowed to file its belated response.

The parties were then given fresh directions on filing of pre-trial documents and the matter adjourned to 5th July, 2021 for hearing.

On **22nd July 2022**, when the matter appeared, both parties had not filed their pre-trial documents.

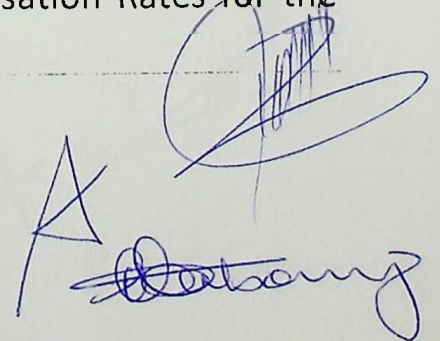
The reason given by Genevive Mugizi who held brief for Mr. Buyamugisha was that their attempts to serve the Respondent's Counsels with a draft joint scheduling memorandum for purposes of completing the joint scheduling memorandum had hit a snag. Fresh directions were given by the Tribunal. The matter was adjourned to 12th September, 2022. This was to be a last adjournment.

On that day, both Mr. Albert Byamugisha and Brian Musota attended. Although the Complainant had filed witness statement, the Respondent had not. It was agreed that the Respondent be allowed more time to file its witness statements(s) but the case to proceed. Assisted by the Tribunal, the parties agreed on two issues for resolution by the Tribunal:

- 1- **Whether the Respondent trespassed on the Complainant's land.**
- 2- **What remedies are available?**

The first witness for the Complainant (**CW1**) was Flavia Nakimuli whose witness statement was admitted as her evidence in chief. She is aged 41 years. She is PRINCE 2 Practitioner with MBA (Finance) and Bachelor of Land Management and Valuation. She is registered with the Surveyors Registration Board as a Chartered Surveyor and a Senior Valuer and Manager, Land Acquisition at New Plan Uganda where she has worked since 2019; but had worked in several places since 2005. She stated that on 1st September 2020, she received instructions from Edward Banda, the Complainant to carry out valuation assessment of part of his land comprised in Freehold Register Volume HQT285, Folio 13, Block (Road) 122, Plot 5, at Kirwa Kisoro District. The assessment was for the land components and developments thereon that were trespassed upon during the erection of poles for a medium voltage electricity line constructed by REA.

The purpose of the valuation was to assess compensation of pine trees that were destroyed by REA, use of land and restoration costs which she assessed at UGX.15,750,000/=. She said that in her assessment, she applied Kisoro District Compensation Rates for the



year 2018/2019. She said she counted tree stumps to get the number of trees destroyed.

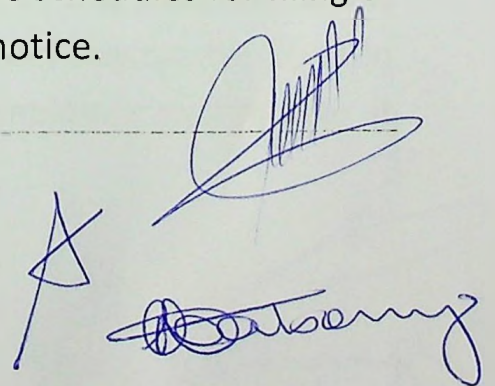
The second witness was the Complainant himself - Edward Banda (CW2). He too made a witness statement which was admitted by the Tribunal as his evidence in chief.

The witness said REA implemented construction works for Kasharara-Cameleon Hill Guest House 33 KV power line for purposes of rural electrification and benefit of community and environs. That REA carried out sensitization of the community. That following complaints from the Administrators of estate of late Eldad Banda, the Way leaves Unit of Ministry of Energy carried out site visit to Complainant's land on 11th December, 2020 with purpose of ascertaining whether the Complainant was affected by the project. He attached a photo of the power line Corridor as Annexure "A."

He said 28 trees were affected and assessed on Form No.8837. A copy of the form was attached as "B."

The witness further stated that the project has obstructed him from developing his land with lines passing over it. Both witnesses were cross-examined by Counsel for the Respondent, Mr. Brian Musota.

At the end of the cross-examination, the matter was adjourned to 15th November, 2022 for the respondent to produce its witness. On that day only Counsel Byamugisha for the Complainant appeared. There being no known reason why the Respondent was not represented and the case having been subject of several unnecessary adjournments at the instance of the Respondent, the Tribunal ordered for the closure of the hearing and gave schedules for filing of written submissions. Judgment was to be on notice.



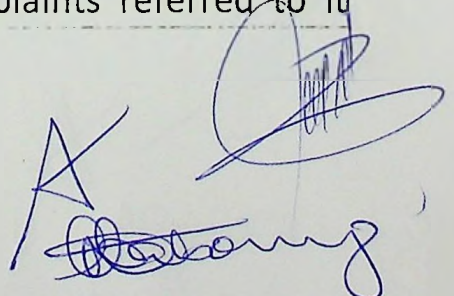
According to the record, the Complainant filed his submissions on 7th March 2023. The Respondent filed its submissions on 5th April 2023 while a rejoinder was filed by the Complainant on 5th June, 2023.

In his submissions, Counsel for the Complainant made submissions on the two issues.

On Issue No.1: *Whether REA trespassed on the suit land*; Counsel contended that Art. 26 of the Constitution forbids deprivation of individual property and makes it mandatory to pay fair and adequate compensation prior to acquisition of property. He contended that the Respondent who did not deny trespass was obliged by the Constitution to pay fair and adequate compensation to the Complainant. He said the Complainant was entitled to UGX.15,750,000/= as assessed by the Valuer **CW1**. Counsel further contended that the Complainant was entitled to general damages for trespass on the land and cutting of trees which he put at UGX.300,000,000/=. Counsel further claimed aggravated damages contending that the acts of the Respondent were both unconstitutional and illegal.

Counsel also prayed that the Respondent be cited for contempt of court for proceeding to install the 132KV amidst an injunction by the Tribunal. He also prayed for interest on the awards and costs.

In his submissions, Counsel for the Respondent prayed for validation of its submissions the same having been filed well beyond the prescribed time. Counsel made lengthy submissions on preliminary objections mainly centered on the jurisdiction of the Tribunal. In his view the Tribunal had no jurisdiction to entertain this matter since in his view the Tribunal can only entertain complaints referred to it

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from Electricity Regulatory Authority (**ERA**). He cited Sec. 109 of the Electricity Act for this assertion. He also cited numerous cases on jurisdiction.

All the cases are in agreement that jurisdiction of court is a creature of the statute and is expressly confirmed by law. Counsel contended that the Tribunal's jurisdiction is confined to matters under Sec.38 (2) & (3), 40, (4), 42 (4), 43 (4) and (5) & (7). We do not find it necessary to reproduce these sections.

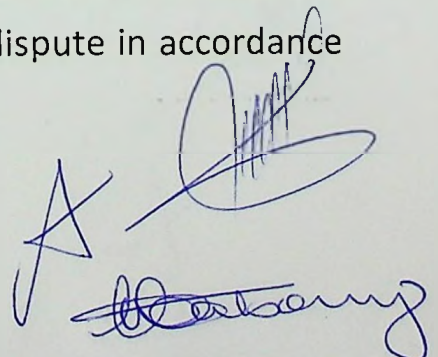
He also stated that the complaint was premature since it was not first referred to **ERA** in accordance to Sec. 70 of the Electricity Act 1999.

On Issue 1; "whether REA trespassed on the Complainant's land", Counsel contended that the Attorney General is only vicariously liable in claims against government and for this liability the identity of an individual person who commits the acts complained of is very important and in the absence of such proof, the AG cannot be liable.

He said no proof has been availed to the Tribunal that the acts of alleged trespass were committed by officers of REA and therefore AG not liable. He contended that the alleged facts of trespass were committed by an independent contractor.

On Issue No.2; "whether the Complainant is entitled to the remedies prayed for." Counsel submitted that the Complainant is not entitled since he did not make a complaint to ERA as stipulated.

Counsel for the Complainant made submissions in rejoinder on the preliminary objection. Counsel contended that the Tribunal had jurisdiction to hear and determine the matter and the only restriction on its jurisdiction is trial of criminal matters and matters where a licensee and a party have agreed to settle the dispute in accordance



with their agreement. He contended that unlike Tribunals like Tax Appeals Tribunal (TAT) and Insurance Appeals Tribunal, this Tribunal was not an appellate Tribunal but had both original and appellate jurisdiction.

He contended that REA was an agency of government and there was evidence it trespassed on the Complainant's land which evidence was not disputed by the Respondent and therefore the Tribunal ought to find AG liable for the acts of REA.

We shall deal with the preliminary objections first.

The first objection centers on the Tribunal's jurisdiction.

Both Counsels cited relevant authorities on the issue of jurisdiction.

We shall single out the case of Friends in Need SACCO Limited Vs. Lulume Nambi Norah; Civil Appeal No.89 of 2019 where Hon. Justice Baguma citing Baku Raphael Obudra & An Vs. AG (SCCA) No.1 of 2005 held that *"jurisdiction is a creature of the statute"* and that *"Courts are established directly or indirectly by the Constitution and that their respective jurisdiction are accordingly derived from the Constitution or other laws made under the authority of the Constitution."*

The Electricity Disputes Tribunal (herein referred to as "EDT") was established by the Electricity Act 1999 Cap.145 Sec.109 thereof states:

- (i) *"The Tribunal shall have jurisdiction to hear and determine All matters referred to is relating to the electricity sector."*
(the emphasis is ours)



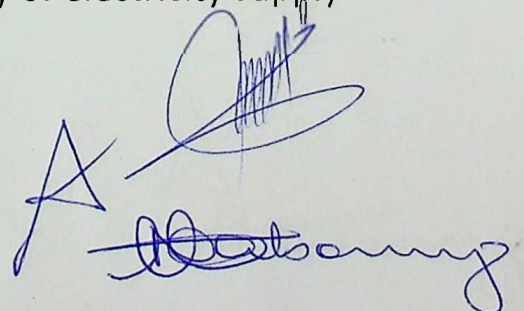
Counsel for the Respondent contends that the words "*referred*" are defined as to pass over to a higher body for decision. That it presupposes a lower body moving the matter to a higher authority for decision.

"It is not different from appeal" Counsel contends. It is Respondent's Counsel's contention that the Tribunal can only handle matters *referred* to it by ERA and by analogy of Counsel on appeal.

The Electricity Act 1999 which established EDT did also establish ERA, pursuant to Sec.5 thereof.

Sec. 10 thereof gives functions of ERA. They are in summary:

- (a) Issuance of licenses
- (b) Processing of application
- (c) Prescription of conditions and terms of license
- (d) Modification of licenses
- (e) Enforcement of directions
- (f) Establishment of a tariff structure
- (g) Approval of rates
- (h) Review of the organization of generation, transmission and distribution companies
- (i) Develop and enforce performance standards
- (j) Encourage the development of uniform electricity industry standards.
- (k) Establish uniform system of accounts for licensees
- (l) Advise Minister on needs of electricity sector projects
- (m) Prepare industry report
- (n) Prescribe and collect license fees
- (o) Provide for procedure for investment.
- (p) Approve standards for the quality of electricity supply



- (q) Approve codes of conduct
- (r) Acquire information and carryout investigations relating to any of its functions

No mention is made above of any dispute resolution function by **ERA**.

The Electricity (Primary Grid Code) Regulations 2003 No.24;, made thereunder in Regulation 21.0 makes a veiled reference to Complaints and Dispute Resolution, thus:

"Where after raising the complaint to the licensee, the consumer is not satisfied with the licensees' response to the complaint, the consumer may refer the complaint to Electricity Regulatory Authority (ERA)."

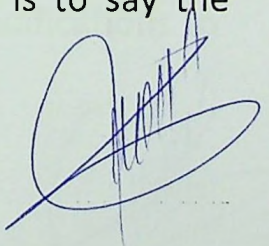
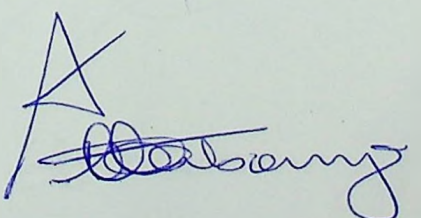
The regulation does not mention the procedure of reference.

Our attention has not been drawn to any instrument defining the mode and procedure of both filing and hearing of such disputes to ERA.

Even then the use of the word "**may**" in the regulation 21.0 above in our view means that it is not obligatory to follow this mode of dispute resolution.

Regulation 21.13 states that this function may be delegated. Again no material has been placed before the Tribunal to show whether the function has been delegated and to whom.

The dispute resolution mechanism in regulation 21.0 is to say the least cast in a shadow of darkness.

We do not think it was the intention of Parliament to leave an important function like resolution of disputes in an important sector like electricity in the shadow of darkness.

In our view the key words in Section 109 are All matters and relating to the electricity sector. This is the bedrock of the Tribunal's jurisdiction.

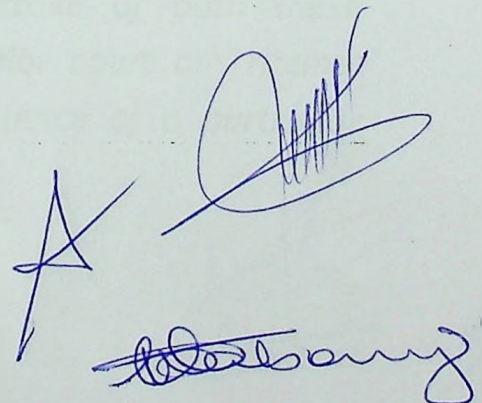
Counsel for the Respondent seems to underplay this mandate and only emphasized the words "referred" which in our view has multiple interpretations.

In 2022 Parliament passed the electricity (Amendment) Act 2022.

Unfortunately the date of commencement and assent are not indicated in the act.

In the amended act Sec.118A deals with "Procedure for dealing with complaints from consumers." It states:-

- (1) A person aggrieved by a decision or action of a licensee may apply to the licensee for redress.
- (2) A licensee shall establish procedures for dealing with complaints from its consumers or potential consumers of the licensee's service.
- (3) The procedures referred to under subsection (2) shall be approved by the authority.
- (4) A licensee shall publish the approved procedures in such a manner as the authority may require.
- (5) The authority may direct the licensee to review its procedures or the manner in which it operates and make modifications to the procedure.

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(6) The authority shall issue guidelines for better implementation of this section.”

We doubt if the above stated is operational but even if it was, we do not think that this would oust the jurisdiction of the Tribunal to handle **all** disputes in the sector as mandated by Sec.109 of the Act, since the amended act does not make it obligatory for the consumer to use this mechanism and neither was the section amended.

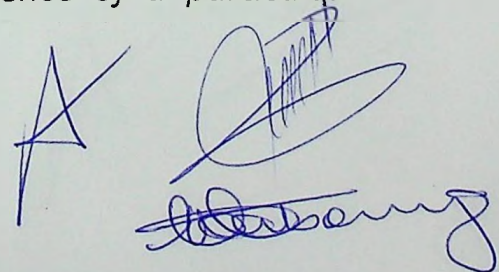
In our view, the limitation of the powers of the Tribunal are in Sec.109 (2) which states:

“For the avoidance of doubt, the jurisdiction of the Tribunal does not include the trial of any criminal offence or the hearing of any dispute that a licensee and any other party may have agreed to settle in accordance with their agreement.”

Counsel Byamugisha in his submissions in rejoinder quoted a text in Words & Phrases Legally defined Volume 3 1 – N – at p.13 as follows:

“ By ‘jurisdiction’ is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by similar means.

If no restriction or limit is imposed, the jurisdiction is said to be the kind and nature of the actions and matters of which the particular court has cognizance, or as or it may partake of both these characteristics. (If the jurisdiction of an inferior court or Tribunal (including an arbitrator) depends on the existence of a particular

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state of facts, the existence of the facts in order to decide the court or Tribunal has been given power to determine conclusively whether the facts exist). The Queen's Bench Divisional Court will inquire into the correctness of its decision by means of proceedings for mandamus, prohibition or certiorari. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given. The jurisdiction of an inferior court is not lost by mere non-use. (10 Halsbury's Laws (4th edn) para 715)."

We find the words in the text instructive.

From the text we can infer that the only limitation put on the Tribunal relates to;

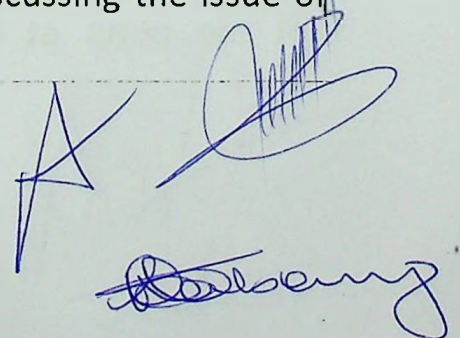
- (i) Trial of criminal matters
- (ii) Disputes that a licensee and any other party may have agreed to settle in accordance with their agreement.

None of the above limitations have been proved to exist in this complaint.

If parliament had intended to put further restrictions on the Tribunal's jurisdiction, it would have done so in very clear and express words.

It is now trite law that when courts (and Tribunal alike) are interpreting any law they must ask the question what did Parliament have in mind, in making the provision under context.

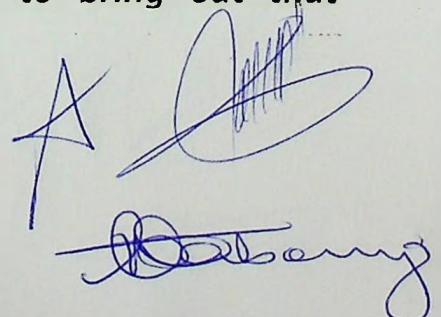
We find two cases on this issue very instructive. The first is **Uganda Revenue Authority Vs. COWI A/S Civil Appeal No. 34 of 2020** where Justice Sptehen Mubiru while discussing the issue of Statutory Interpretation held that:-



"...in modern times, any exercise in interpretation and application of statutes cannot be undertaken on the assumption that it is an exercise without any object, that the Acts have no "spirit" or aim. For example the House of Lords, in Pepper (Inspector of Taxes) v. Hart [1993] 1 All ER 42, used the "purpose" approach to the interpretation of a fiscal statute and confirmed that it is permissible to use the Hansard Reports as an aid to statutory interpretation. Lord Denning led the way in Davis v. Johnson [1978] 1 All ER 841, when he used the Hansard Parliamentary Debates 25 Reports (the "Hansard Reports"), the use of which was previously denied to the judiciary, as an aid to assist the court in finding the intention of Parliament and the purpose behind a provision. He rejected the notion that judges should "grope about in the dark for the meaning of an Act without switching on the light..."

The other case is Uganda Prosecution Vs. Kusemererwa Julius: Criminal Case No.HCT-01-CR-SC 0015-2014. In that case (without going to the depth of the facts) court held:-

"Law is not mere words. Law is made by legislators for a particular purpose. As the Latin maxim goes; "(Legislatorum est viva vox, rebus et non verbis legem imponere)" meaning that "the voice of legislators is a living voice, to impose laws on things, and not on words." The intention of the legislators must be read in the law by giving the correct meaning to words and phrases within the context of the legislative history of the offence in question. The court interpreting the law must look at the background and events, including committee reports, hearings, and floor debates, leading up to enactment of the law. Such history is important to courts when they are required to determine the legislative intent of a particular statute. I have labored to bring out that



legislative history by quoting the Parliamentary Hansards. The typing error or failure to delete the words "or girl" from the section on rape or failure to do proper cross-referencing by the First Parliamentary Counsel or draftsman upon amendment of the PCA, must be corrected by the High Court giving the law its correct interpretation. Interpreting the law is our work as courts of law."

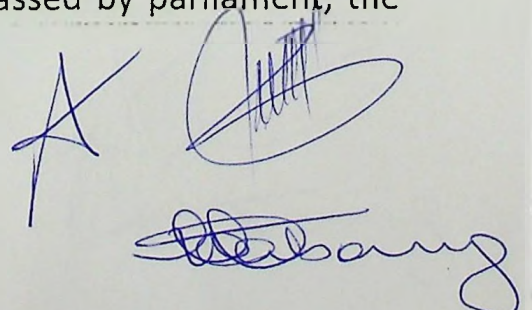
We have in the process of writing this judgment had the opportunity to read Hansard of Parliament of the Republic of Uganda to establish the background to Sec.109(i) and 2 of the Electricity Act 1999 in respect to the jurisdiction of the Tribunal. In the initial bill the bill had used the title "Electricity Appeals Tribunal."

In the committee on 12th October 1999, the Chairman of the Sectional Committee on Natural Resources Mr. Kajara Aston made the following recommendation to Parliament:

"The Committee recommends that the Tribunal should be renamed by deleting the word "Appeals" because it exercises, both original as well as appellate jurisdiction and to call it "Appeals" would mean that you can only appeal to it."

In his submission, Counsel Byamugisha juxtaposed the Insurance Appeals Tribunal and the Tax Appeals Tribunal and contended that Parliament deliberately named them "Appeals" Tribunals because they had appellate jurisdiction.

It is very clear from the above passage that the Tribunal was intended to handle all matters related to the electricity sector whether on appeal from any organ in the sector or as an original complaint. As stated in the resolution passed by parliament, the

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Tribunal has both original and appellate jurisdiction. We refer to our ruling in Pius Owor Complaint EDT No.017 of 2023 and the case of Ruzinda K Jackson & 3 Others Vs. Rural Electrification Agency & 2 Others: C.S No.20 of 2021 for the proposition that the Tribunal has both original and appellate jurisdiction. The restrictive argument by the learned State Attorney that the Tribunal has no original jurisdiction has no basis in law and is a complete misunderstanding of the provisions of Sec.109 of the Electricity Act 1999.

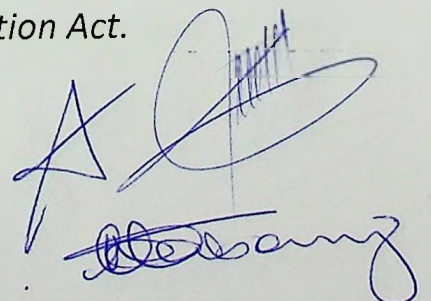
It is our firm view that the intention of Parliament was to confer both appellate and original jurisdiction on the Tribunal and it was therefore lawful for the Complainant to file his complaint in the Tribunal without going to ERA.

In the premises, the preliminary objection by the State Attorney that the Electricity Disputes Tribunal (EDT) has no jurisdiction to hear matters, save for those emanating from ERA is hereby rejected.

The second objection by Counsel for the Respondent is that the filing of the complaint is pre-mature. Learned Counsel bases his contention on Sec.70 of the Electricity Act and contends that to the extent that the matter was not referred to the Tribunal by ERA, the same must fail.

Section 70 (1) & 2) states:

(1)“ Any question as to the entitlement of any person to compensation for right of use or as to the sufficiency of compensation under section 67(3) shall, in default of agreement, be determined as if the land had been acquired under the Land Act and the Land Acquisition Act.



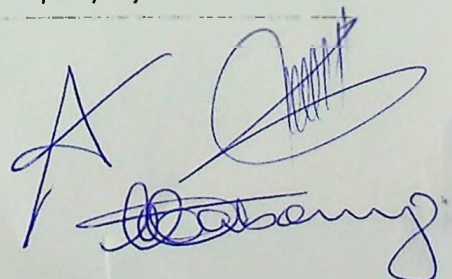
- (2) *A claim for compensation under this section shall be lodged with the authority within one year of the date of the act of the operator which gave rise to the claim, except that the time for lodging the claim may be extended on application to the authority, showing sufficient reasons for the extension."*

Sec. 70 makes reference to compensation under Sec. 67(3) of the same act.

Unfortunately the learned State Attorney either by commission or omission did not cite Sec.67 titled "Power to Licensee to use land" and a comprehensive methodology which a licensee must take to enter private land to acquire way leaves.

We shall reproduce the provisions of Sec.67:

1. *A licensee authorized by the authority either generally or on a particular occasion may place and maintain electric supply lines in, over or upon any land ...*
- (2) *A licensee shall not, in the exercise of the powers conferred under this section **except with the consent of the owner of the land** under, over, along, across, in or upon which any electric supply line is placed-*
 - (a) *Acquire any right other than that of the user of the land under, over, along, across, in or upon which an electric supply line or post is placed and for the reason of that exercise;*
 - (b) *Exercise those powers in respect of any land vested in or under the control or management of a local government or other public authority, except in accordance with the procedure set out in section 68*
- (3) *A licensee shall do as little damage as possible to the land and to the environment and shall ensure prompt payment of fair*



and adequate compensation to all interested persons for any damage or loss sustained by reason of the exercise of the powers under this section.

- (4) *A licensee shall, except for the maintenance or repair of any electric supply line, before entering any private land for the purposes specified under subsection (1), **give sixty days' notice to the owner of the land, stating as fully and accurately** as possible the nature and extent of the acts intended to be done.*
- (5) *The owner of the land for the purposes specified in subsection (1) may, within thirty days after the receipt of the notice under subsection (4), lodge a written objection with the authority, and the authority shall specify a date to inquire into the objection.*

In our view for the Respondent to take advantage of Sec.70, it must have complied with provisions of Sec.67 in respect to its acquisition.

The facts from the complaint do not show that Respondent did give the requisite notice to the Complainant; and that the Complainants did give consent to the Respondent's entry on his land.

Having failed to follow the law, we think the Respondent cannot turn around and purport to benefit from the same law it flagrantly violated. As the old adage states "**He who seeks equity must come with clean hands**". The Respondent here does not have clean hands.

This preliminary objection is answered by our ruling on objection No. 1 above. It must equally fail and is hereby rejected.

We shall now deal with the substantive issues.

Resolution of Issues:

Issue No.1: Whether the Rural Electrification Agency trespassed?

CW2 stated that sometime in November 2019, REA, acting through its agents, contractors or employees entered his land and there cut down mature pine trees, dug deep holes and posted poles in these holes without his consent.

CW¹ Flavia Ntambi a valuation surveyor stated that she received instructions from the Complainant to carry out a valuation of part of the Complainant's land ; Freehold Register Volume HQT285, Folio 13, Block (road) 122, Plot 5 Kirwa Kisolo District. She found that REA had erected poles for medium voltage line and had in the process cut down the Complainant's mature pine trees. She went on the ground and assessed the damage and made a report.

The construction of the power line is not denied by the Respondent in its defence, response. Para 5 of the Response states;

"In 2019/2020 Rural Electrification Agency (REA) on behalf of the Government of Uganda undertook construction of medium and low voltage powerline through the areas of Kululiko to Rugabano with a tee-off to Kirwa areas in Kisoro District under Islamic Development Bank (IDB) funding phase II."

Indeed according to para5(d) of the same response,

"the Respondent's (REA) inspection team visited the area and established that the power line had affected 27 pine trees, 0.1 omushanga tree and 01 flower and that the Respondent is in the process of valuing the damaged trees for purposes of compensating the Complainant using 2017/2018."

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Trespass is said to occur when a person makes an unauthorized entry upon land and thereby interfering or pretends to interfere with another person's lawful possession of land.

See **Justine E.M. N. Lutaya Vs. Sterling Civil Eng. Civil Appeal No.11 of 2002**, where court held *"trespass to land occurs when a person makes an unauthorized entry upon another's land thereby interfering with another's lawful possession of the land."*

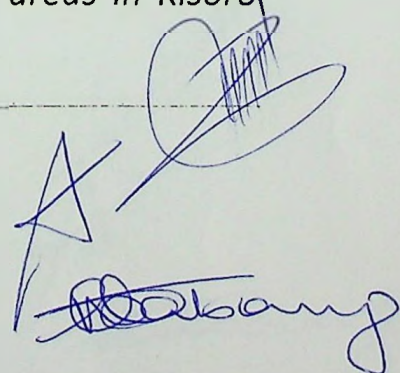
In our view the evidence of the Complainant and his witnesses and the response by the Respondent do confirm that REA indeed trespassed on the Complainant's land.

Counsel for the Respondent contended that the AG is only liable in claims against government, and that in this case there is no evidence that the officials of REA committed the acts of trespass complained of and therefore the AG is not liable. Counsel invited the Tribunal to take judicial notice that REA did not act on its own and that it at all material times had a contractor whose actions the AG cannot be held liable.

We think that the argument of the learned State Attorney is mere sophistry, a gamble and a bad one at that.

As submitted by Counsel for the Respondent in its belated response, para 5 (a)-(d) the AG states:-

"a. In 2019/2020 the Rural Electrification Agency (REA) on behalf of the Government of Uganda undertook construction of medium and low voltage 33KV power lines through the areas of Kululiko to Ragabano with a tee-off to Kirwa areas in Kisoro

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*District under the Islamic Development Bank (IDB) funding
Phase 11*

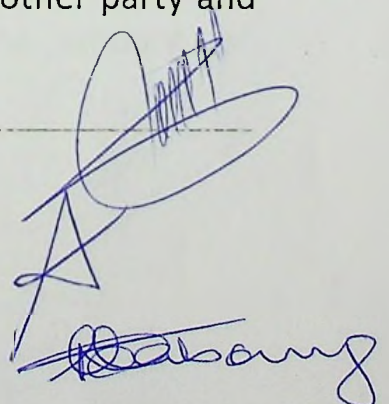
- b. Prior to the construction works REA carried out sensitization and community engagement meetings to create awareness and secure acceptance of the project by the communities of Kululiko, Rugabano and Kirwa where the power line was to traverse.*
- c. The REA conducted investigation into the complainant's claim and a joint field inspection was done with the complainant's representative/caretaker of the land.*
- d. The inspection team found that indeed it is true that the powerline traversed through the complainant's land affecting 27 pine trees, 01 omushaga tree, and 01 flower. It was also found that the complainant can still use the land as the powerline was largely planted within the road reserve."*

How does Counsel now turn around to submit that REA did not undertake the construction or AG is not liable? This is being disingenuous as well as being cynical.

We do agree with Counsel for the Complainant that *"once the admission is made, the party making the same will not normally be allowed to depart from a pleaded admission unless made under a genuine mistake of fact."*

See **Divorce Cause No.6 of 2001: Annet Nakaleme Kironde Vs. Apollo Kaddu Mukasa Kironde & Anor.**

No genuine mistake of fact has been brought to our attention. There was no evidence available to the Tribunal that contrary to the averments in the response filed by the AG, another party and not REA constructed the offending power line.



On admission and on the strength of the un rebutted evidence from **CW1** and **CW2**, we find that the impugned lines were constructed by REA, or its agents, contractors; an agency of government without the consent of the Complainant and the Respondent is vicariously liable for the trespass as admitted and any resultant consequences. It is also a legislative fact that REA was established as an agency by the Minister of Energy and Mineral Development through Statutory Instrument 2001 No.75 to operationalise Government's rural electrification function. Issue No.1 is answered in the positive.

Issue No.2: What remedies are available to the parties?

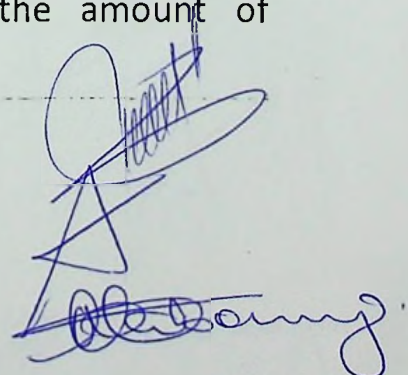
The Complainant sought orders for:

- (i) Compensation
- (ii) General damages
- (iii) Aggravated damages
- (iv) Interest & Costs.

(i) **The compensation being sought:**

The Complainant sought payment of UGX.15,750,000/= as a result of trespass and destruction of his crops. This amount was confirmed by the unchallenged evidence of Flavia Nakimuli (CW2) a valuation surveyor who visited the land and assessed the value. The claim is in a form of special damages. It is trite law that special damages must be specifically pleaded and proved.

We are satisfied that the amount which was pleaded has been proved. The Respondent is ordered to pay the amount of UGX.15,750,000/= to the Complainant.



(ii) General damages:

Counsel contended that the Complainant is entitled to general damages. He prayed for a sum of UGX.300,000,000/=.

The Complainant testified that the agents, servants or employees of REA came to his land without his consent. Attempts by his lawyers to stop the construction were ignored by the Respondent. The Respondent were even unmoved by injunction issued by this Tribunal.

The law on general damages is stated that ***“general damages are presumed or implied to naturally flow or accrue from the wrongful act. They are a result of inconvenience and mental anguish caused due to the Respondent’s action against the Complainants.”*** We agree the Respondent must bear the consequences of its unlawful act and the resultant inconvenience.

General damages are at the discretion of the Tribunal. We take the view that an award of UGX.100,000,000/= (One hundred million only) is appropriate and order the same to be paid by the Respondent to the Complainant.

Interest: In the case of Hon. Justice Egonda Ntende stated; *“An award of interest is discretionary and the basis of an award of interest is that the defendant has kept the plaintiffs out of his money and defendant has had the use of it himself, so he ought to compensate the plaintiff accordingly.”* See **Begumisa Financial Services Ltd Vs. General Holding Ltd and Anor. [2007] EA 28.**

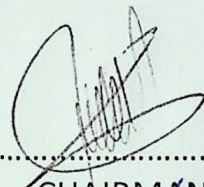
The Respondent ought to have paid the Complainant before use of his (Complainant's) land. It did not. We think the Complainant is entitled to interest of 24% per annum on special damages from the date of filing till payment in full and 8% on general damages from the date of judgment till payment in full.

Costs: Costs generally follow the event. A successful party is generally entitled to costs unless there is sufficient reason to disentitle the party.

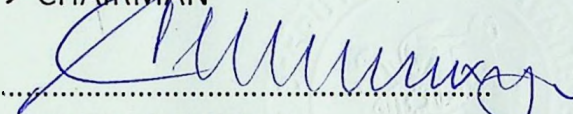
We find no reason for disentitling the Complainant from an award of costs. Costs are therefore awarded to the Complainant against the Respondent.

We so order.

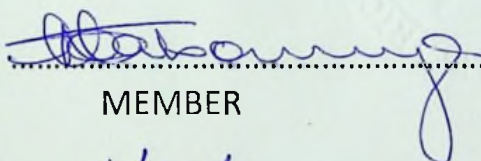
Charles Okoth-Owor


.....
CHAIRMAN

Anaclet Turyakira


.....
VICE-CHAIRMAN

Harriet Wanyoto


.....
MEMBER

DATED at Kampala this ^{18th}.....day of ^{March}.....2024.

