

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-CA-0063-2011

(Arising out of Mbale Civil Suit No.0064 of 2010)

UMEME LTD.....APPELLANT

VERSUS

WAISWA DAVID.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

This appeal arises out of the judgment and orders of the Magistrate Grade I Mbale in which he gave judgment to the respondent **Waiswa David** against the appellant, Umeme Limited in the following terms that:

- (i) The Plaintiffs (Respondents) metre box be immediately connected.
- (ii) The defendant (appellant) reconnects power with immediate effect.
- (iii) The defendant (appellant) pays the plaintiff (respondent) special damages of Ug X 8,400,000/= for loss of business.
- (iv) The defendant (appellant) pays the plaintiff (respondent) UG X 10,000,000/= as general damages for inconveniences caused on him by the disconnection of power.
- (v) The defendant (appellant) pays UGX 3,000,000/= as exemplary damages.
- (vi) The defendant (appellant) pays costs of the suit.
- (vii) The defendant (appellant) pays interest on (iii), (iv), (v) and (vi) above at a rate of 24% per annum from the time power was disconnected until payment in full.

The appellant was dissatisfied with the judgment and orders of the learned Magistrate hence this appeal.

It is common knowledge that for a first appellate court to properly re-evaluate the evidence adduced at the trial it has to thoroughly peruse and comprehend the entire record in order to reach its conclusion. Whether the findings of and orders of the trial court can stand.

When I did this I got stuck at one point because the record shows that the lower court proceeded *ex parte* as per its order of 10th January 2010. (See order on P.3 of the proceedings in the record of appeal). On the 17th of January 2011, the lower court confirmed its order unless it was set aside.

Court proceeded *ex parte* and heard **PW.1 Waiswa David** who closed his case on Page 6 upon which judgment was fixed for 24th January 2011.

Surprisingly, on 9th March 2011 cross-examination of PW.1 was conducted. I wonder under what circumstances. On Page 9 of the record of appeal, the defence case started with **DW.1 Stephen Epilu** testifying and he was cross-examined by the plaintiff. Judgment was again reserved for 30th May 2011.

In the bundle of the lower court record presented before me, I came across Misc. Application No.13/2011 where a consent order dated 21st January 2011 was entered for setting aside the order to proceed *ex parte* and parties agreed to proceed inter parties on 28.1.2010 (an apparent date error).

This preceded the proceedings of 9th March 2011 when PW.1 was cross-examined. Clearly, the trial court for unknown reasons, did not start hearing the case afresh

having ordered to set aside the *exparte* proceedings. It used the *exparte* proceedings to have PW.1 cross-examined and proceeded to hear the defence case.

This was irregular. The trial court ought not to have allowed cross-examination of a witness on the proceedings which were non-existent for having been set aside by consent.

For this reason, I am constrained to hold that the lower court proceedings were irregular and a mistrial from which no valid appeal can arise.

In the interest of justice, the proceedings which were null and void will be set aside and a retrial is hereby ordered.

Since the trial court was to blame for this mistrial each party shall meet its costs.

Stephen Musota

JUDGE

22.05.2013