

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL APPEAL NO. 129 OF 2018

ELECTRICITY REGULATORY AUTHORITY----- APPELLANT

VERSUS

WATUWA JIMMY COSMAS..... RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The Appeal and Cross Appeal arises from the decision of the Electricity Disputes Tribunal in Complaint No. 007 of 2017. The Respondent filed the complaint alleging that he was deprived of his fundamental right to practice his profession where the Appellant did not issue installation permits to him, violation of right to livelihood, recovery of special damages, costs and general damages.

During the trial before the Electricity Disputes Tribunal, the following issues were raised;

1. Whether the Complainant's right to practice his profession was infringed upon by the Respondent?
2. Whether the Complainant's right to a fair hearing was infringed upon by the Respondent?
3. Whether the Complainant violated the terms and conditions of Class D permit ERA/EIP/CLD/015/1301 issued to him?

4. Whether the Complainant is entitled to the remedies prayed for in the Complaint?

The tribunal heard the parties and evaluated the evidence adduced before them; the learned members of the Tribunal delivered their judgment on 2nd August 2018 and thus found that;

- a) The Installations Permit Committee did not exercise its powers fairly in processing the Complainant's permit and that the Complainant was not accorded a speedy hearing which is a vital component of the right to a fair hearing within the law.
- b) The Complainant be given time to appear before the Committee with the relevant documents. The hearing and decision making was to be made within 15 working days from the date of judgment.
- c) The Installations Permit Committee was ordered to resolve the issue as to the violation of the terms and conditions of Class D permit No. ERA/EIP/CLD015/1301 as the Complainant had not been accorded fair and speedy hearing in the first place.
- d) The Complainant is not entitled to special damages because they were not proved and that a sum of UGX 7,000,000 was awarded as compensation to the complainant.
- e) Each party bears its own costs.
- f) The process of issuing the Complainant with the 2018 permit be handled within 15 days

Aggrieved by the decision of the Tribunal, the Appellant filed this Appeal challenging the decision of the Tribunal on the following grounds;

1. That the Electricity Disputes Tribunal had no jurisdiction to decide the issue of “Whether the Complainant’s of right to a fair hearing has infringed upon by the Respondent.”
2. That the Tribunal erred in law in holding that the Complainant was not afforded a speedy hearing which is a vital component of the right to a fair hearing within the law.
3. That the Tribunal erred in law in awarding UGX. 7,000,000/= to the Complainant against the Respondent as general damages.
4. That the Tribunal erred in law in ordering the Respondent through its organ to immediately consider the Complainant’s application for the licence for the year 2018 and to finalize the process “within 15 working days” from the date of the order.
5. The Appellant also seeks orders that; the appeal be allowed and the decision of the Electricity Disputes Tribunal be set aside and costs of this Appeal be awarded to the Appellant.

The respondent also Cross-Appealed against the decision of the Electricity Disputes Tribunal on the following grounds;

1. The Electricity Disputes Tribunal erred in law and in fact in failing to award special damages that were pleaded and proved by the respondent/Cross Appellant.
2. The Electricity Disputes Tribunal erred in law and in fact when it failed to resolve the issue on; *“Whether the complainant’s right to practice his profession was infringed upon by the respondent”*
3. The Electricity Disputes Tribunal erred in law and in fact by awarding dismal general damages of 7,000,000/= to the respondent/Cross-Appellant

At the hearing of the appeal, the appellant was represented by Learned Counsel *Byamugisha Albert* and the respondent was represented by Learned Counsel *Aboneka Micheal*. In the interest of time the court directed that the matter proceeds by way of written submissions.

It is true that the duty of this Court as first appellate court is to re-evaluate evidence and come up with its own conclusion.

This position was reiterated by the Supreme in the case of ***Kifamunte Henry v Uganda SCCA No. 10 of 1997***, where it was held that;

“The first appellate court has a duty to review the evidence the evidence of the case and to reconsider the materials before the trial Judge. The appellate Court must make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it.”

I have taken the above principles into account as I consider the Appeal and Cross-Appeal. I have considered the record of proceedings and the lower Court/Tribunal and have considered the written submissions of respondent since the appellant never filed submissions.

GROUND ONE

The Electricity Disputes Tribunal had no jurisdiction to decide the issue of;“ Whether the Complainant’s right to a fair hearing has been infringed upon by the Respondent.”

The respondent’s counsel submitted that The Electricity Disputes Tribunal had the Jurisdiction to decide on the issue above. According to *Black’s Law Dictionary 8th Edition page 867*, Jurisdiction can be defined as Court’s power to decide a case or issue a decree.

The Electricity Disputes Tribunal is established under *Section 93 of the Electricity Act Cap 145*. According to the Electricity Act the objective of the Electricity Disputes Tribunal *is to hear complaints related to the power sector, which includes disputes between consumers and the public bodies charged with generation, transmission and distribution of electricity.*

The Jurisdiction of the Tribunal is provided for under Section 109 of the Electricity Act Cap 145 in the following terms;

“(1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it relating to the electricity sector.”

Furthermore, the jurisdiction of the Tribunal is provided for under Rule 4 of the Electricity Disputes Tribunal (Procedure) Rules 2012. Rule 4 stipulates that;

“4. Jurisdiction of the Tribunal.

The Tribunal shall have jurisdiction to hear and determine all matters referred to it relating to the electricity sector.

For the avoidance of doubt, the jurisdiction of the Tribunal does not include the trial of a 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.”

The dispute between the parties being allegations resulting from complaints of consumers as well as issues to do with licensing by way of permit fall within the purview of *Rule 4 of the Electricity Disputes Tribunal (Procedure) Rules.*

This implies that the Electricity Disputes Tribunal is armed with statutory mandate to settle electricity disputes between consumers, licensees charged with generation, transmission and distribution of electricity in Uganda.

The Respondent’s complaint before the tribunal was in regard to the renewal of his permit. It was respondent’s submission that that the respondent had to be given a fair hearing. The basis of the fair hearing is provided for within section 11 of the Electricity Act 1999. Section 11 provides for conduct of functions. It states;

“(1) The authority shall perform its functions and exercise its powers in a manner that-

- a) Is open and objective;*
- b) Is fair and reasonable;*
- c) Is nondiscriminatory ; and*
- d) Promotes fair competition.”*

According to respondents counsel, because the Respondent was aggrieved by the failure of the Committee and Authority to have his permit renewed, he lodged a complaint before the Electricity Disputes Tribunal (EDT). EDT proceeded to hear the matter since it had jurisdiction to do so and the complaint involved a breach of section 11 of the Act.

It is therefore our considered opinion that the Tribunal in its judgment, pages 114-19 of the Index of Appeal exercised its jurisdiction and rightly resolved the issue of “*whether the Complainant’s right to a fair hearing was infringed by the Respondent;*” and therefore this ground should fail.

Resolution

Article 42 of the Constitution provides for a right to just and fair treatment in administrative decisions.

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

Everybody is enjoined to apply the provisions of the Constitution and in the same breadth, the Electricity Disputes Tribunal mandated to resolve disputes arising out of the Electricity sector.

This ground of appeal fails.

GROUND TWO

That the Tribunal erred in law in holding that the Complainant was not afforded a speedy hearing which is a vital component of the right to a fair hearing within the law.

It is the Respondent’s submission that the Electricity Regulatory Authority violated the Respondent’s right to practice his profession. According to **Article 28 of the Constitution** of the Constitution of Uganda, *while determining civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an impartial court or tribunal established by law.*

The Respondent's contention on the right to a fair hearing is premised on the fact that Respondent received the letter (**Page 67 of the record of proceedings**) from the Appellant dated 15th September 2016 on 28th February 2017 which required him to prepare for the assessments of the April-June 2016 period. The Tribunal rightly resolved this issue on *page 118 paragraph 20-25* of the record of proceedings *"that the period from 15th September 2016 when the invitation was purportedly made to 28th February 2017 when he physically interacted with the Committee amounted to unreasonableness in terms of the time span between when the invitation to the hearing was made and when it actually took place."*

The respondent further submitted that, the Tribunal rightly relied on the case of **ARIHO vs The Governing Council of Uganda College of Commerce, Pakwach in Misc. Civil Cause No. 0009 of 2016** to come to a right conclusion that the Respondent / Cross Appellant was not accorded a fair and speedy hearing by the committee. The Court in the above case held that

"...the rules of natural justice are presumed to apply to bodies entrusted with judicial or quasi-judicial functions only. Although no such presumption arises with respect to bodies charged with performing administrative functions, in a purely policy oriented traditionally administrative sphere of decision of decision making, however, when arriving at decisions with potentially serious adverse effects on someone's rights, interest or status in exercise of a purely administrative authority has a duty to act fairly, which is a less onerous duty than that of observing the rules of natural justice demanded of such bodies when they act in quasi-judicial capacity, such as when they undertake disciplinary proceedings..."

The Learned members of the Tribunal also considered the chronology of events between the parties as well as evidence from the Appellant's witnesses. The issue of whether the Appellant wrote to the Respondent as early as 15th September 2016 to appear before the Committee on 10th October 2012 even before he applied for his permit for the year 2017 and why the Appellant had not replied to the Respondent's letter about the pending hearing was never clarified by the Appellant's witness one Engineer Joseph Bwambale a Principal Compliance Engineer from ERA.

He testified that for the year 2016 the Respondent was invited on 15th September 2016 following reports from UMEME that wiring was incomplete and the main

switch was not installed. The Respondent was invited to defend his actions on the scheduled hearing date being 10th October.

The Appellant's witness told court that he did not know the date when the Complainant received the invitation; **page 39 of the proceedings**. He also stated that the Respondent did not attend the hearing and was given a further opportunity to appear on 28th February 2017. That as an individual he learnt of the Respondent's complaint to the Tribunal when he appeared before the Committee on 28th February 2017.

Basing on these averments the Tribunal did not find merit in his testimony and therefore rightly believed the Respondent's testimony that indeed he did not see the Respondent's letter till 28th February 2017 the same day he was to appear before the Appellant. As a result of the Appellant's conduct the Respondent could not present the documents required before the Committee as he lacked prior knowledge and thus denying the Respondent a fair hearing.

The respondent's counsel contended that the Tribunal ably and rightly resolved this issue in finding that the Appellant did not afford the Respondent a speedy hearing that is vital to the right to a fair hearing and therefore this ground should as well fail.

Resolution

This court agrees with the submission of counsel for the respondent on this ground in entirety.

The Tribunal at page 11 of the judgment noted; *"To resolve whether or not the complainant's right to fair trial was violated, it is important to discuss the sequence of events as well as the evidence of the parties to establish whether the principles were observed."*

It is clear that the tribunal properly evaluated the evidence and the chronology of events before arriving at its decision.

This ground of appeal also fails

GROUND FOUR

The Tribunal erred in law in ordering the Respondent through its organ to immediately consider the Complainant's application for the licence for the year 2018 and to finalize the process "within 15 working days" from the date of the order.

The respondent's counsel further submitted that, the Tribunal having well and rightly held that the Complainant's right to a fair hearing was infringed by the Appellant, it was imperative that a remedy should ensue. The Respondent had to be accorded another opportunity to present the necessary documents before the Installations Permit Committee (IPC) to ascertain whether the allegations in regard to the questionable installations were indeed tenable. The Tribunal directed as follows;

"We order the Respondent through its organ immediately considers the Complainant's Application for the license for the year 2018. This process must be finalized within 15 working days from the date of this order."

According to counsel, the Tribunal referred the matter back to the Appellant to provide the Respondent a fair trial in order to comply with Regulation 5 and 11 of the Electricity (Installations Permit) Regulations 2003.

These regulations provide for conditions to be satisfied for a person who has applied to the Committee for a permit (Regulation 11) and the mandate of the IPC to provide permits to persons qualified to practice as installation personnel. In light of the above, the Tribunal's directive was lawful and rightly reached at and therefore this ground should fail.

Resolution

There is no basis for challenging the remedy that was given by the tribunal. The respondent deserved to be heard fairly and impartially. That is the basis of sending him back to the body mandated to issue a permit.

This ground also fails.

GROUND THREE

The Tribunal erred in law in awarding UGX. 7,000,000/= to the Complainant against the Respondent as general damages. OR

The Electricity Disputes Tribunal erred in law and in fact by awarding dismal general damages of 7,000,000/= to the respondent/Cross-Appellant

Both parties challenged the general damages under the different heads of being excessive or being too low/dismal.

The respondent's counsel submitted that it is a settled position of law that general damages are a form of damages that a court awards in its discretion and will be presumed to be the natural and probable consequence of the Defendant's act or omission; In the case of **James Fredrick Nsubuga vs Attorney General HCCS No. 13 of 1993**.

It follows that a Plaintiff who has suffered damage due to the wrongful act of the Defendant must be put in a position as near as he should have been in had he or she not suffered the wrong. In assessing the quantum of damages, courts are namely guided by the value of the subject matter, and the economic inconvenience that a party may have been put through; **Kibimba Rice Limited vs Umar Salim SCCA No. 17 of 1992**.

While the Cross Appellant besieged the Tribunal for general damages of UGX. 100,000,000/= [One Hundred Million Shillings], the Tribunal considered the fact that he had been denied a fair trial and awarded him a sum of UGX. 7,000,000/= as general damages. It is trite that an Appellate Court can interfere with the exercise of discretion of the trial judge only where he has acted on a wrong principle or where the award is manifestly high as to occasion a miscarriage of justice; **Mbogo vs Shah (1968) EA 93 at 96**.

The Cross Appellant further submitted that he had been denied a right to practice his profession and thus a right to livelihood, his children dropped out of school, he was evicted from houses on several occasions because he could not afford rent, sold of his property in order to sustain his family, lost income for the three years

he was not practicing his profession. The damages caused by the Respondent to the Cross Appellant were grave and continue to persist as up to date, the Respondent have refused to issue the permit to the Cross Appellant despite several demands and he thus continues to languish in dire lack and a shattered livelihood.

It is our prayer therefore for the reasons above that this court is pleased to find that the UGX 7,000,000 that the Tribunal in 2017 are dismal compared to the loss he has suffered and that it should please you my Lord to revise the same upwards considering the circumstances of the Cross Appellants.

Resolution

In awarding general damages, courts should take into account the fact that they are deemed compensatory and not punitive, for damages are pecuniary recompense given by the process of law to a person for the actionable wrong that another has done to him. *See Christopher Bamweyana vs Herman Byanguye HCCA No. 24 of 2017.*

There are circumstances under which an appellate court can interfere with the exercise of discretion on award of general damages. ***Mbogo & Another vs Shah [1968] EA 93***, *Sir Charles Newbold P* held that The Court of Appeal should not interfere with the exercise of discretion of a judge unless it is satisfied that;

- a) The Judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or that this amounted to a miscarriage of justice.
- b) That the trial judge acted upon a wrong principle of law.
- c) The amount awarded is so high or so low as to make it an entirely erroneous estimate of damages to which the plaintiff was entitled.

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. *See Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21*

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

This court notes that the tribunal held that; *“We assess the sum of shs 7,000,000/= as adequate compensation to the complainant and accordingly award the same”*

However, I donot see how they assessed or arrived at the said figure. Like wise the cross-appellant never gave any figures or breakdown of how this money he demanded as general damages arose apart from a lump sum claim of 100,000,000/=.

It is true that general damages are awardable in cases for loss of business/employment income and loss of reputation.

And because the appellant staff acted in abuse of their authority and in a highhanded manner without proper explanation and due regard to the respondent’s wellbeing he needs and deserves to be compensated adequately commensurate with the suffering occasioned.

The Cross-Appellant stated in Paragraph 27 of his witness statement that;

“That I have suffered a lot of damages, ranging from special damages of termination of my insurances, and my family’s insurance policies, which lapsed as a result of failure to remit premiums due to lack of income, and general damages which include, my children’s education negatively being affected due to lack of income from my business or employment, dramatization from evictions, and as such I sold my properties ranging from cars to land, to be able to survive up to the time I walked to the tribunal.”

It is not in dispute that the respondent lost as a result of the delay to issue permits to him in a timely manner and also the refusal to issue permits without according him a fair hearing.

This court finds the award of 7,000,000/= to have been manifestly low as a result of the suffering meted out on the respondent/cross-appellant.

The court awards the respondent/Cross appellant a sum of 20,000,000/= as fair compensation.

This ground of appeal fails for the Appellant and succeeds for the cross Appellant.

GROUND FIVE

The Electricity Disputes Tribunal erred in law and in fact when it failed to resolve the issue on; “Whether the complainant’s right to practice his profession was infringed upon by the respondent”

The Electricity Disputes Tribunal is established under **Section 93 of the Electricity Act Cap 145**. According to the Electricity Act the objective of the Electricity Disputes Tribunal *is to hear complaints related to the power sector, which includes disputes between consumers and the public bodies charged with generation, transmission and distribution of electricity. [Emphasis supplied]*

Furthermore, the jurisdiction of the Tribunal is provided for under Rule 4 of the Electricity Disputes Tribunal (Procedure) Rules 2012. Rule 4 stipulates **that;**

“4. Jurisdiction of the Tribunal.

*The Tribunal shall have jurisdiction **to hear and determine all matters referred to it relating to the electricity sector.** [Emphasis supplied]*

The dispute between the parties being allegations resulting from complaints of consumers as well as issues to do with licensing by way of permit fall within the purview of *Rule 4 of the Electricity Disputes Tribunal (Procedure) Rules*. This implies that the Electricity Disputes Tribunal is armed with statutory mandate to settle electricity disputes between consumers, licensees charged with generation, transmission and distribution of electricity in Uganda.

In the instant matter, it was clear from the record of proceedings and the judgment of the Tribunal that the Respondent had not accorded a fair and speedy trial to the Cross Appellant and it further acknowledged that the Cross Appellant was not issued with the permit and went ahead to order the Respondent to issue it in 15 working days. This, my Lord implies that the Cross Appellants right to practice his profession was infringed upon and that the Tribunal has the same mandate as provided in Rule 4 to determine all matters including this issue relating to the Cross Appellants' right to practice his profession.

It was the cross-appellant submission that the Tribunal ought to have exhaustively addressed and resolved this issue as per its mandate and we therefore invite this honourable court to find that the Tribunal failed to exercise its mandate on this particular issue. In the alternative, we pray that this Court pronounces itself on this issue that indeed the Cross Appellants right to practice his profession was violated by the Respondent.

Resolution

The tribunal at pages 15, 16 and 17 of judgment analysed and resolved the above contention and thus concluded;

“Our conclusion is that the documents referred to work done by him and he had an obligation to explain his role in the alleged work before renewal of his licence.

As pointed out earlier, the electricity sector is a highly regulated sector. Those who seek licences to perform functions in the sector must be ready and willing to abide by the rules and standards set by the regulator. Not to do so has serious consequences.

Since in the first issue we ruled that the complainant did not receive a fair hearing, and equally since the responsibility to grant licences for installation is vested in the committee and the grant is subject to conditions to be fulfilled by the complainant, we are unable to rule that the complainant's right to practice his profession has been violated, the complainant not having furnished to the committee the documents sought, in order to assess him.”

The tribunal was right in its finding and this court finds no reason to fault them.

This ground of Cross Appeal fails.

GROUND SIX

The Electricity Disputes Tribunal erred in law and in fact in failing to award special damages that were pleaded and proved by the respondent/Cross Appellant.

The respondent/Cross-Appellant submitted that in its judgment, the Tribunal held on page 126 paragraph 1 of the record of proceedings that “...Although the Complainant pleaded special damages of SHs. 35,0751,185 no evidence was brought to prove or support this amount.”

The position of the law on special damages is that special damages must be specifically pleaded and strictly proved. In the case of **Juliet Nalwoga V Buzubu Charles and 2 others (High Court Civil Suit No. 768 of 1998)** Justice E.S. Lugayizi noted that “...Court is also satisfied that the plaintiff strictly proved the details of special damages when she produced the relevant receipts, namely, Exhs. “P1A”, “P1B”, “P1C”, “P2” and the police accident report that she must have paid for. Court will therefore award her the special damages...”

In the instant Cross Appeal, the Cross Appellant rightly proved the special damages to the Tribunal page 55 of the record of proceedings when he presented exhibits of the insurance policies marked “**P9**” on **pages 69-73** of the record of proceedings that were terminated as a result of not financing them due to the reasons that he was not working because of the failure of the Respondent to issue him with the Installation permit. That is because of the failure on the part of the Respondent that the Cross Appellant suffered the loss accruing from termination of his insurance policies.

The Cross Appellant specifically took on life insurance with ICEA Life Assurance Company to an assured sum of UGX 30,075,188 (Uganda Shillings Thirty Million Seventy Five thousand One hundred eighty) and that he was not able to pay the outstanding premium of UGX 7,300,000 because he had stopped working. The

Insurance policy was later terminated and he lost the sum assured (UGX 30,075,188).

Further, the Cross Appellant had another insurance policy (Accidental death benefit and life assurance) from Sanlam Insurance Company for his wife and four children as beneficiaries. The sum assured was UGX 15,000,000 (Fifteen Million Shillings) in total. The Cross Appellant was not able to pay the monthly premium for the same reasons; that he was denied a chance to practice his professions therefore living a shattered livelihood and as such, he wasn't able to pay the premium. The total amount lost by the Cross Appellant as sum insured due to failure to pay premium amounted to UGX 35,075,188 (Thirty Five Million Seventy Five Thousand One Hundred and Eighty Eight Shillings).

The Cross Appellant proved this before the Tribunal and that the Tribunal ignored this proof thus leading a wrong conclusion and failing to award the Cross Appellants the special damages that he specifically proved. It was the respondent's submission that the Tribunal should have evaluated this evidence and made a decision on the special damages claimed and as such, this ground should succeed and Court should find that the Cross Appellant was entitled to recover his special damages, which he proved specifically which were occasioned as a result of the inactions and omissions of the Respondent.

Resolution

Prospective income cannot be special damages, what the cross-appellant is claiming as special damage was resultant loss due to the non-renewal of licence and this would only fall within the category of general damages.

Secondly Special damages must be specially pleaded and full particulars thereof supplied. It should be attributed to the defendant (for example, since it was reasonable foreseeable) within the contemplation of the parties.

The tribunal was right to deny the cross-appellant special damages since it was never pleaded and the cross-appellant just threw them to court at the trial and it was never specifically pleaded.

This ground of appeal fails

In the final result for the reasons stated herein above this appeal fails and is dismissed with costs in this court and in the court below and the cross-appeal partially succeeds and the cross-appellant is allowed 1/3 of the costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
16th/08/2019