THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL APPEAL NO. 106 OF 2018

ARISING OUT OF EDT COMPLAINT NO. 20 OF 2017

UGANDA ELECTRICITY TRANSMISSION

COMPANY LIMITED::: APPELLANT

VERSUS

1. **FREDRICK E. SSEMPEBWA**
2. **ELIZABETH SSEMPEBWA ::: RESPONDENTS**

BEFFORE: HON: JUSTICE EMMANUEL BAGUMA

JUDGMENT

Introduction.

The respondents filed a claim against the appellant that the appellant had failed/neglected to pay compensation for land and other developments thereon taken for a way leave by the appellant.

During the hearing of the EDT Complaint, the appellant and respondent reached a partial agreement to adjust the sum of 211,000,000/= (**Two hundred eleven million shillings**) to 311,532,203/= (**Three hundred eleven million five hundred thirty two thousand two thousand two hundred three shillings)** to cater for the inflation adjustment rate.However, the parties did not agree on the issue of interest and they left it for the tribunal's determination.

The respondents were successful in their claim for interest and the appellant being dissatisfied with the judgment and orders of the tribunal filed this instant appeal.

The memorandum of appeal initially had 6 grounds but at the hearing of the appeal, both counsel for the appellant and respondents agreed on 4 grounds for court's determination.

Grounds.

1. **Whether failure of all members of Electricity Disputes Tribunal to sign the judgment in complaint No. 20 of 2017 rendered the judgment defective?**
2. **Whether the interest of 20% awarded by the tribunal amounted to a double computation or was unreasonable and unconscionable?**
3. **Whether the tribunal rightly determined the issue of interest without the parties filing a consent settlement?**
4. **What remedies are available to the parties?**

Representation.

The appellant was represented by Ms. Eva Nabadda Sevume while the respondents were represented by Mr. Arthur Ssempebwa together with Mr. Edwin Buluma Wabwire.

Duty of the 1st appellate court.

The duty of this court as a first Appellate Court was stated in the case of **Kifamunte Henry V Uganda, S.C criminal Appeal No. 10 of 1997** where court held that;

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

This Court therefore has a duty to re-evaluate the evidence to avoid a miscarriage of Justice as it mindfully arrives at its own conclusion.

I will therefore bear these principles in mind as I resolve the grounds of appeal in this case.

Ground. 1.Whether failure of all members of Electricity Disputes Tribunal to sign the judgment in complaint No. 20 of 2017 rendered the judgment defective?

Submissions by counsel for the appellant on Ground. 1.

Counsel for the appellant submitted that the judgment delivered by the tribunal on **18th September 2018** at page 59 of the record of appeal was signed by two of the three members of the tribunal which can only mean that only 2 of the 3 members made the judgment.

Counsel stated that **Section 105 of the Electricity Act** provides for the quorum of the tribunal to be 3 members when presiding over any case.

Counsel referred to **Rule 26 (5) of the EDT regulations** which provides that the decision of the tribunal shall be signed by all the members.

Counsel argued that the decision of a court without quorum is a nullity and incompetent. Counsel cited the case of **Komaketch V Rose Akol SCCA No. 21 of 2010** where court held that;

"…it is our considered opinion that the ruling by the Court of Appeal is a nullity because it lacked Coram during hearing and decision."

Counsel further added that in the instant case, the judgment by the tribunal was made without quorum since it was signed by only 2 members thus rendering the decision defective and a nullity.

Submissions by counsel for the respondents on Ground.1

Counsel for the respondent submitted that according to the record of proceedings, the Coram of the Tribunal was fully constituted at all times. Counsel submitted that there was no hearing conducted regarding the matter wherein the tribunal was not fully constituted in compliance with **Section 105**

of the **Electricity Act**. Counsel referred to **pages 27 to 35 of the record of proceedings.**

Counsel stated that the judgment was signed by only 2 panel members because one of the panel members Eng. Dr. Moses K. Musaazi passed away before the award was delivered by the tribunal.

Counsel argued that non signature of the judgment by the deceased does not invalidate or render the award/judgment delivered by the tribunal defective.

Counsel added that **rule 26 (1) of the EDT (Procedure) Rules 2012** provides that the decision of the tribunal may be unanimous or determined by the majority verdict.

Counsel cited the case of **Orient Bank V Frederick Zaabwe & Ors S.C Civil Application No. 17 of 2007** where court held that;

"Neither the interest of justice nor public policy would demand that a decision of 5 judges be invalidated because 1 of the judges who participated in the decision retired or died before the decision was pronounced."

Counsel submitted that the appellant on the basis of the said judgment paid the 311,532,203/= thus it is estopped from denying the validity of the judgment delivered by the tribunal.

Counsel for the respondents prayed that court finds the award by the tribunal dated **18th December 2018** valid and effective.

Analysis of court on Ground. 1

Section 105 (1) of the Electricity Act provides that;

"***The tribunal shall be constituted for a proceeding when three of the members are present."***

Rule 26 (1) of the EDT (Procedure) Rules 2012 provides that;

"The decision of the Tribunal may be unanimous or determined by the majority verdict."

In the case of **Orient Bank V Frederick Zaabwe & Ors S.C Civil Application No. 17 of 2007** the Supreme Court held that;

"In our view, much as the date of delivery is the day the judgment takes effect, it is not the day the decision is made.Neither the interest of justice nor public policy would demand that a decision of 5 judges be invalidated because 1 of the judges who participated in the decision retired or died before the decision was pronounced."

In the instant case, I observed from **page 1 of the record of proceedings** that the tribunal was fully constituted with 3 members during the hearings that is; on **26th September 2017** at page 1 of the record of proceedings, on the **14th December 2017** at page 4, on the **16th January 2018** at page 5 and on the **12th February 2018** the last day of the hearing at page 7.

It is my considered opinion that since the tribunal was fully constituted during the hearings and the judgment was fully signed by the majority which is two members of the tribunal, non-signature by one member does not invalidate it.

According **to rule 26 (1)** of **the EDT (Procedure) Rules 2012** the decision should be determined by a majority verdict which was done in this case since two members of the tribunal signed the decision which was the majority in this matter.

Further I find that the appellant was not prejudiced by the decision of the tribunal since it acted on the same to make the payment of **311,532,203/= (Three hundred eleven million five hundred thirty two thousand two hundred three shillings)** to the respondents thus it cannot turn around now and claim that the judgment was defective and a nullity yet it acted on it by making the said payment to the respondents.

In addition to the above findings, counsel for the respondents submitted that the 3rd member of the tribunal passed on before delivery of the judgment which was not rebutted by the appellant's counsel in rejoinder.

I therefore find that failure of one member out of the three members to sign the judgment does not render the judgment defective.

Ground. 1 of the appeal fails.

Ground 2. Whether the interest of 20% awarded by the tribunal amounted to a double computation or was unreasonable and unconscionable?

Submissions by counsel for the appellant on Ground.2.

Counsel for the appellant submitted that there was no agreement between the parties providing for interest but both parties decided to consider the Bank of Uganda reports on inflation of the shilling since 2011 to 2017 before arriving at the figure of UGX **311,532,203**/=.

Counsel argued that the interest was catered for by the inflationary adjustment rate and the respondents in their submissions at the tribunal failed to justify the reason for the award of interest as they had already been compensated by the inflationary adjusted rate.

Counsel added that awarding interest to the respondents in addition of the adjustment on account of the inflation amounted to double computation, unjust enrichment and a rip off to the appellant. That the members of the tribunal erred in law when they awarded the respondents interest yet the appellant had considered an inflationary adjustment on their compensation.

Counsel further stated that the tribunal awarded the respondents interest at 20% on UGX 211,000,000/= **(Two hundred eleven million shillings**) from April 2011 to the date of judgment and 20% on UGX 311,532,203/= from the date of judgment to the date of payment in full. Counsel submitted that the total interest awarded by court as of now stands at UGX 437,596,181/= excluding the

sum of 311,532,203/= which has already been paid off thus the appellant would have to pay a total sum of UGX 749,128,384/= to the respondents.

Counsel referred to the case of **Mark Extraction Enterprises Ltd V M/S Nalongo Orphanage HCCS No. 4 of 1996** where court held that;

"***Interest is awarded from the date of filing the suit till payment in full."***

Counsel also cited the case of **Stanbic Bank Uganda Ltd V Hajji Yahaya Sekalega HCCS No. 185 of 2009** where court held that;

"Where interest was not agreed upon by the parties, court should award interest that is just and reasonable…in determining a just and reasonable rate, courts take into account the ever rising inflation and drastic depreciation of the currency. A plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him/her against any further economic vagaries and inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due."

Counsel prayed that court finds that the claim of interest at a rate of 20% p.a was unreasonable and unconscionable and amounted to a miscarriage of justice.

Submissions by counsel for the respondents on Ground. 2.

Counsel for the respondents submitted that the award by the tribunal did not amount to double computation and neither was it unreasonable nor unconscionable as alleged by the appellant.

Counsel argued that the amount agreed to be paid by the appellant to the respondent was UGX **311,532,203/= (Three hundred eleven million five hundred thirty two thousand two hundred three shillings)** which was based on inflationary adjustment rate on the compensation award of UGX

211,000,000/= **(Two hundred eleven million shillings**) which had been offered to the respondents way back in 2011.

Counsel further stated that the money paid by the appellant did not cater for interest since the 311,532,203/=**(Three hundred eleven million five hundred thirty two thousand two hundred three shillings)** was a representation of the real value of the offer made by the appellant to the respondents in 2011 without any computation/consideration of interest.

Counsel referred to the case of **Esero Kasule V Attorney General HCMA No. 688 of 2014** where court held that;

"Interest is meant to compensate a plaintiff for the deprivation of the use of his money that remained unpaid at the time of institution of the suit."

Counsel submitted that the tribunal rightly awarded interest from 2011 till the date of judgment thus the award was reasonable and conscionable in the circumstances.

Analysis of court on ground. 2.

Section 26 (2) of the Civil Procedure Act provides that;

"Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

In the case of **J.K Patel V Spear Motors Ltd SCCA No. 4 of 1991** court held that;

"***The time when the amount claimed was due is the date from which interest should be awarded."***

In the instant case, the amount claimed of 211,000,000/= was agreed upon in **April 2011** and the tribunal awarded interest of 20% from the date of the claim to the date the judgment was passed on **18th September 2018.** The tribunal also awarded interest of 20% on the adjusted sum of 311,532,203/=**(Three hundred eleven million five hundred thirty two thousand two hundred three shillings)** from the date of judgment to the date of payment in full.

I have also noted that the money paid by the appellant did not cater for interest because the sum of 311,532,203/= **(Three hundred eleven million five hundred thirty two thousand two hundred three shillings)** was the real value of the offer in 2018 made by the appellant to the respondents in 2011 without any computation/consideration of interest, and that is when the parties agreed to leave the issue of interest to the tribunal to determine.

I therefore find that the award by the tribunal did not amount to double computation and neither was it unreasonable nor unconscionable.

Ground. 2 fails.

Ground 3: Whether the tribunal rightly determined the issue of interest without the parties filing a consent settlement?

Submissions by counsel for the appellant on Ground 3.

Counsel for the appellant submitted that the agreement made by the parties was neither signed by them nor their advocates which is contrary to the provisions of the law hence there was no valid consent judgment.

Counsel argued that in the present case, the Parties never appeared before the Tribunal to orally communicate a consent and neither did they sign a consent settlement, therefore there is no valid and binding consent judgement on the Parties and the EDT acted in error to presume that there was one.

Counsel referred to the case of **Peter Mulira v Mitchell Cotts C.AC.A No. 15 of 2002,** where the Court of Appeal stated that**;**

"The law regarding consent judgment is that parties to a civil suit are free to consent to a judgment. They may do so orally before a judge who then records the consent or they may do so in writing and affix their signatures on the consent. In that case still the court has to sign that judgment."

Counsel added that there was never a consent judgement entered by the parties which can legally bind them thus the judgement of **18th September 2018** is based on an erroneous presumption that the parties had consented.

Submissions by counsel for the respondent on Ground 3.

Counsel submitted that on the **12th February 2018**, the parties represented by their counsel informed the tribunal that a partial settlement had been made by the parties wherein the amount of 211,000,000/=**(Two hundred eleven million shillings**) would be paid to the respondents adjusted to reflect the real value of the money at that time. Counsel **referred to page 33** of the record of appeal.

Counsel stated that the appellant cannot allege that it was unaware of the consent agreed upon with the respondent yet the subject of the said consent was paid by the appellant to the respondents.

Counsel added that the appellant is estopped from denying the contents of the consent agreement subject to **Section 114 of the Evidence Act**.

Counsel further argued that the appellant's allegation is moot since it went ahead to pay the respondents based on the terms in the said consent agreement and also confirmed in the proceedings of **12th February 2018** that the parties had agreed to consent accordingly save for the issue of interest.

Analysis of court on Ground. 3.

Section 114 of the Evidence Act provides as follows:

"When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she, his or her representative shall

be allowed, in any suit or proceeding between himself or herself and that person or his or her representative to deny the truth of that thing."

In the case of **Stanbic Bank Uganda Ltd V Uganda Crocs Ltd SCCA No. 4 of 2004, court noted that;**

"One of the conditions for the doctrine of estoppel under section 114 of the Evidence Act to apply is, that the act or omission by the person against whom estoppel is to be set up, as a defence, must have been intentionally caused."

In the instant case, the appellant on **page 1 of their written submissions** at the disputes tribunal stated that the parties agreed to settle the claim on terms that the appellant pays the respondents 311,232,203/=**(Three hundred eleven million five hundred thirty two thousand two hundred three shillings),** the computation of the said sum basing on the inflationary adjustment rate.

I find that the appellant's allegation is questionable because the appellant went ahead to pay the respondents based on the terms of the said consent thus it cannot allege that it was unaware of the consent agreed upon with the respondents yet it went ahead and paid the amount of the said consent to the respondents.

Accordingly, ground.3 of the appeal fails.

Ground. 4: What remedies are available to the parties?

Submissions by counsel for the appellant on Ground 4.

Counsel for the appellant submitted that the judgement of the Tribunal was defective and a nullity for want of quorum thus court should set aside the orders of the Tribunal awarding interest of 20% to the Respondents.

Counsel also prayed that costs of the appeal should be awarded to the appellant.

Submissions by counsel for the respondents on Ground. 4.

Counsel for the respondents submitted that the appellant is not entitled to any remedies sought thus this appeal should be dismissed with costs.

Analysis of court on Ground 4.

In the final analysis, I find that the appellant had already acted on the decision of the tribunal by paying the amount of the claim to the respondents save for interest which this court has also found to be reasonable in the circumstances.

Conclusion.

In conclusion this appeal is hereby dismissed with the following orders;

1. The judgment and orders of the tribunal are hereby upheld.
2. Costs of the appeal are awarded to the respondents.

I so order.

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Emmanuel Baguma

Judge.

26/05/2021