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The Republic of Uganda
In the High Court of Uganda Holden at Soroti
Civil Suit No. 23 of 2022

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Elayu Aloysius Plaintiff
Versus
UMEME Limited Defendant

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

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1. Introduction:

Elayu Aloysius (hereinafter referred to as “the Plaintiff”) filed this suit against Umeme Limited (hereinafter referred to as “the defendant”) for breach of contract and negligence.

The plaintiff seeks the following orders;

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- a) A declaration that the defendant breached the contract it had with the plaintiff to constantly supply electricity to the plaintiff’s premises.
- b) A declaration that the defendant was negligent when it unlawfully disconnected the electricity supply to the plaintiff’s premises.
- c) Special damages of UGX 52,300,000
- d) General damages
- e) Punitive damages
- f) Interest and,
- g) Costs of the suit.

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2. The Plaintiff’s case:

The plaintiff avers that around 2018, he contracted the services of Umeme for a connection of his premises at Serere township, upper shops along Market street in Kakus Ward in Serere to the electricity grid having made the requisite payments for the said connection the defendant’s office in Soroti.

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The defendant’s staff promptly connected the plaintiff’s premises to the electricity grid, on Meter No. 042261240057.

5 That soon thereafter the plaintiff commenced a poultry and piggery business at his premises, where he used the electricity to provide lighting and heating at the poultry farm as well as security lighting at his piggery farm.

The plaintiff avers that his poultry business gained pace with monthly earnings of UGX 2,352,941 while the piggery farm business gained earnings of UGX 6,000,000 every six
10 months.

The plaintiff avers that around August 2019, the defendant's staff while carrying out fieldwork, without any notice disconnected the plaintiff's premises from the electricity grid along the market street.

That for over a year and five months, the plaintiff on several occasions approached the
15 defendant's office in Soroti seeking a reconnection of electricity to his premises, only to be met by demands to pay a reconnection fee, yet the plaintiff was not at fault when the defendant's field staff disconnected electricity from his premises.

The plaintiff contends that his business came to a standstill for which he has lost his gainful business income or earnings.

20 The plaintiff further averred that when the defendant was notified about the plaintiff's intentions to file this suit for compensation but was flagrantly ignored except that the defendant hurriedly reconnected power to the plaintiff's premises.

3. Representation:

In this suit and at the hearing, M/s Natala and Company Advocates represented the
25 plaintiff while the defendant who did not file a written statement of defence was not represented.

On 31 August 2022, after being satisfied that proper service had been effected by the plaintiff against the defendants and the fact that the defendant did not file a written statement of defence, this court by virtue of Order 9 rule 6 of the Civil Procedure Rules
30 entered a default judgement against the defendant and the matter was then set for formal proof.

4. Issues:

The following issues are set for the determination of this suit.

- 35 a) Whether the plaintiff is entitled to UGX 52,300,000 alleged to be a loss of earnings due to the actions of the defendant?
- b) What are the remedies available to the plaintiff?

5 3. Civil Matter:

This being a civil suit, the burden of proof lies with the plaintiff (sections 101 and 102 of the Evidence Act, Cap 6). The standard of proof in civil cases is on a balance of probabilities as was pointed out in *Nsubuga vs. Kawuma [1978] HCB 307*.

10 Furthermore, as was held in *Erumiya Ebyetu v. Gusberito [1985] HCB 64*,

 “...where the plaintiff leaves his case in equilibrium the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard.”

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The above legal positions are taken into account in resolving this instant suit.

 5. Issues:

The following issues are framed for the resolution of this dispute.

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- a. Whether the plaintiff is entitled to UGX 52,300,000 alleged to be a loss of earnings due to the actions of the defendant?
- b. What are the remedies available to the plaintiff?

 6. The Evidence:

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The plaintiff in proof of his case led evidence of one witness, that is, himself as PW1. He also exhibited documents in support of his case and these are;

- a. Photocopy of duplicate receipts which all together were exhibited as PEX1.
- b. Photographs of the plaintiff’s poultry farm severally exhibited as PEX2.
- c. “Yaka” electricity power payments receipt for payments between 01/08/2015 to 30 05/01/2021, severally exhibited as PEX3.

 7. Submissions:

35 Upon the completion of the plaintiff presenting his evidence, his counsel filed written submissions through his counsel. The submissions together with the pleadings and the evidence adduced have all been taken into account in resolving this dispute accordingly.

 8. Court’s findings and decision:

- a. Whether the plaintiff is entitled to UGX 52,300,000 alleged to be a loss of earnings due to the actions of the defendant?

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Order 9 Rule 8 of the Civil Procedure Rules SI 71-1 provides as follows;

5 Where the plaint is drawn with a claim for pecuniary damages only or for
detention of goods with or without a claim for pecuniary damages, and the
defendant fails or all defendants, if more than one, fail to file a defence on
or before the day fixed in the summons, the plaintiff may, subject to rule 5
of this order, enter an interlocutory judgment against the defendant or
10 defendants and set down the suit for assessment by the court of the value of
the goods and damages or the damages only as the case may be in respect of
the amount found to be due in the course of the assessment.

15 According to decided cases, a final judgement may be entered in respect of a liquidated
demand with similarly an interlocutory judgement entered in respect of the claim for
pecuniary damages claimed in the same plaint.

20 That was the position of the courts in *Lloyds Forex Bureau v Securex Agencies (U)*
Ltd CS No.358 of 2012 and *National Social Security Fund v Kisubi High School CS*
No.440 of 2011 wherein the reasoning of Evershed LJ in *Abbey Panel & Sheet Metal*
Co. Ltd v Barson Products (a firm) 1947] 2 ALL ER 809 was adopted with respect to
a similar provision of the law under England's Civil Procedure Code.

 At page 810 in his holding in *Abbey Panel & Sheet Metal Co. Ltd* (cited above),
Evershed LJ had this to say;

25 *"The intended scope and purpose of RSC, Ord 13. Rr. 3-7 inclusive, appear to*
me to be reasonably plain. They provide that where a plaintiff has in his writ
made a claim against a defendant for one or more of the follows, vis, (a) a debt
or liquidated demand, (b) detinue, and (c) pecuniary damages, and such
defendant, though properly served, does not choose to appear to the writ, then
the plaintiff may, without having to take any further steps against the
30 *defendant, obtain a judgement against him for his claim - in the case of a*
liquidated demand, a final judgement; in the other cases, an interlocutory
judgement subject to assessment by the court of the monetary amount he is
entitled to recover."

35 In light of the above holding, the Ugandan cases of *Lloyds Forex Bureau* and *National*
Social Security Fund, (both of which are also cited above), similarly went on to hold
that a judgement in default is entered for a liquidated sum while an interlocutory
judgement is entered in respect of the claim for pecuniary damages. That such
distinction was necessary so as to enable a plaintiff to proceed under Order 9 rule 6 of
the Civil Procedure Rules with respect to the liquidated demand and Order 9 rule 8 with
respect to the claim for pecuniary damages or detention of goods with or without a claim
40 for pecuniary damages in the same plaint.

5 It is upon the latter basis that this matter is proceeding to formal proof. In the instant case, the case of the plaintiff is anchored on special damages. In *Hajji Asuman Mutekanga vs. Equator Growers (U) Ltd S.C.C.A No. 07 of 1992*, the Supreme Court clearly pointed out that special damages must be specifically pleaded and strictly proved.

10 This position was adopted in *Kyambadde v Mpigi District Administration [1983] HCB 44* where the court further added that special damages is proved even if not supported by documentary evidence.

In the instant matter, the plaintiff pleads special damages as is seen from under paragraph 6 of his plaint as follows;

15 - **Particulars of Special Damages:**

a) Monthly poultry earning UGX 2,352,941 X 17 months = 39,999,997

b) Piggery half yearly earnings UGX 6,000,000 X 1 ½ (one and half) years = 12,300,000

Total UGX 52,300,000

20 It is a requirement that special damages do not deal with estimates but rather with exact financial losses. This was the position of the court in *Joseph Musoke Vs Departed Asian Property Custodian Board and Another Civil Appeal No. 1992 (Reported in [1990 – 1994] 1 EA 419*, where it was held that;

25 *“...special damages must be explicitly claimed on the pleadings, and at the trial, it must be proved by evidence both that the loss was incurred and that it was the direct result of the defendant’s conduct...”*

30 In the instant matter, the plaintiff while testifying as PW1, told court that he was claiming UGX 52,300,000/= from the defendant for that amount arises from the loss of earnings from his poultry and piggery farm due to breach of contract by the defendant. In support of his claim, the plaintiff adduced photographs of hens and pigs in an effort to confirm the fact of his carrying out poultry and piggery business. Those photographs were admitted in evidence as PEX2.

35 In proof as to the earnings from his poultry farm, the plaintiff told court that from his poultry farm he was able to make sales after every period of about 5 to 6 months and could get about UGX 13,433,300 and that since the defendant cut of power to his poultry farm for a period of 17 months, a period during which he would have made three (3) sales, then his sales loss amounted to Ug. Shs. 40,300,000.

5 As for the piggery farm, the plaintiff told that he used to sell pigs after every 6 to 8 months and that whenever he could sell, he would get about UGX 6,000,000 and so during the lost period of 17 months when power was disconnected from his farm by the defendant, he lost two (2) sales within which he could have earned Ug. Shs. 12,000,000.

10 According to the plaintiff, therefore, his potential earnings from his poultry and piggery business totaled to Ug. Shs. 52,300,000 from the poultry and piggery for the 17 months' period of disconnection of electric power by the defendant.

He went on to state that the defendant cut off power supply to his farm around August 2019 and only reconnected the same on the 10th February, 2021 after being served a notice of intention to sue.

15 To support the assertion of his potential earnings during the impugned period of 17 months, the plaintiff adduced receipts of his sales and from his farm product buyers. Those receipts were admitted in evidence as PEX1. The plaintiff also adduced the evidence of "Yaka" electricity power payments receipts for the between 01/08/2015 to 05/01/2021. Those receipts were severally exhibited as PEX3.

20 Accordingly, counsel for the plaintiff in his final submissions went on to assert that since the plaintiff had adduced the required evidence to prove not only that he used to operate a poultry and piggery farm but had also adduced convincing and consistent evidence to how he arrived at the amount of money he is now claiming against the defendant which is Ug. Shs 52,300,000, then this court should find sense in the plaintiff's case as he had not only adduced factual corroborative documentary evidence of PEX1 and PEX2 in relations to existence of his farm but had proved that fact of his continuing to pay the defendant for services not rendered a period of 17 months which caused him the loss.

30 I would agree with that assertion the plaintiff indeed had a farm and that from the farm he had earnings but suffered a total of 17 months of electricity disconnection as a result of the fault of the defendant. And as was similarly found in *GAPCO (U) Ltd vs A.S Transporters Limited [2009] 1 HCB 6*, I would find that the plaintiff has proved special damages not only by documentary evidence but also by cogent verbal evidence.

35 In my considered opinion, the plaintiff has adequately answered the question of whether the cutting of the electric power by the defendant contributed to the whole loss now he is claiming before this court.

Accordingly, I would answer this issue in the positive and hold the defendant liable for the total loss occasioned by the plaintiff during the period of 17 months when electric power was not supplied to his farm.

40 The plaintiff is thus awarded Ug. Shs. 52,300,000 as special damages.

In relations to general damages, Counsel for the plaintiff submitted correctly that though the plaintiff is claiming general damages, it is trite law that general damages are

5 awarded at the discretion of the court as was pointed out in *Luzinda vs. Ssekamatte & 3 Ors, Civil Suit No. 366/2017* that;

10 “...general damages are awarded at the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the Defendant’s actions”.

In this instant matter, the plaintiff claim to general damages is anchored on his testimony that due to the act of the defendant he was inconvenienced when electric power was disconnected from his farm without a reason. He further testified that because of the electric power cut by the defendant there arose a serious security threat to farm because of the resultant darkness at the premises. He further testified that due to the resultant darkness he was forced to travel back and forth from Serere to Soroti several times to task the defendant to reconnect the electricity, in vain and had subsequently had to travel from Serere to Kampala, to the defendant’s head office, to retrieve a printout showing his regular payments for power electricity power consumption as evidenced by PEX 3.

According to counsel for the plaintiff, the situation which the plaintiff found himself in was at fours with that in the case of *Fred Ssekamwa V UMEME Ltd Civil Suit No. 26 of 2010*, where similarly the defendant disconnected the power (electricity) supply to of the plaintiff without any justifiable with the court in that suit holding the defendant liable for the loss occasioned by the plaintiff therein and subsequently awarding him a sum of UGX 50,000,000 after the court found as a matter of fact that the plaintiff had indeed paid all the monies asked for by the defendant but the defendant still failed to provide a stable power supply to the Plaintiff.

In the instant matter, proof has been made that in spite of the cut of power supply to the farm of the plaintiff, he continued to promptly pay his power dues as proved by PEx. 3 but still the defendant disconnected his power without any notice and reason and only reconnected it after it was served with a notice of intention to sue.

In the instant case, the plaintiff testified to making several journeys from Serere to Soroti and even Kampala in following up on the reconnection issue of power to his premises by the defendant to no avail though he continued paying for the service.

Given this factual proof, I would find that the action of the defendant of receiving funds from the plaintiff and not supplying him power as required would call for the plaintiff being awarded general for all the inconveniences of the resultant darkness he suffered at his home farm business including the plaintiff’s children failing to do their school homework which all were a result of the negligent actions of the defendant. This is in line with the holding in *Kampala District Land Board & George Mitala Vs Venansio Bamweyana Civil Appeal No. 2 of 2007* where it was held that damages claimed must be seen to be the direct and probable consequence of the act of a defendant complained

5 such as loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering.

Therefore, I would conclude that the resultant suffering by the plaintiff and all the inconveniences he met was a direct consequence of the defendant's action and as such he is entitled to an award of Ug. Shs. 50,000,000 as general damage, which amount I
10 do find as appropriate in the circumstances.

b. What are the remedies available to the plaintiff?

Having resolved Issue No.1 above in the favour of the plaintiff, I would conclude that the plaintiff deserves the remedial action as against the defendant in order for the defendant to atone, not only for the loss it occasioned to the plaintiff but for taking
15 money from the plaintiff without supplying the services paid for a period of 17 months. Since the plaintiff has proved his case on a balance of probability, I would enter judgment in this matter in this favour.

9. Orders:

- a. This suit is found to have merit on all grounds and as such judgment is entered
20 in the favour of the plaintiff.
- b. It is hereby declared that the defendant breached the contract it had with the plaintiff to constantly supply electricity to the plaintiff's premises.
- c. It is hereby declared that the defendant negligently and unlawfully disconnected the electricity power supply to the plaintiff's premises.
- d. The Plaintiff is thus awarded Ug. Shs. 20,000,000 /= as compensation for breach
25 of contract and negligence by the defendant.
- e. The plaintiff is awarded Ug. Shs. Ug. Shs. 52,300,000 as special damages.
- f. The plaintiff is awarded UGX 50,000,000 as general damages.
- g. The Plaintiff is awarded interest of 18% per annum on (b) and (d) above from
30 the date of this judgement till payment in full.
- h. The Plaintiff is awarded interest of 18% per annum on (c) above from the date of filing this suit till payment in full.
- i. No award for punitive damages is made in the circumstances.
- j. The Plaintiff is awarded costs in this suit.

35 I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

16th March 2023

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