

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**  
**CIVIL SUIT NO. 1013 OF 2018**

**NANSUBUGA NADIA ..... PLAINTIFF**

**VERSUS**

**UGANDA ELECTRICITY TRANSMISSION  
COMPANY LIMITED ..... DEFENDANT**

**BEFORE: HON. LADY JUSTICE CORNELIA KAKOOZA SABIITI**

**RULING ON PRELIMINARY POINT OF LAW**

The Plaintiff filed this suit on 14<sup>th</sup> December 2018 for a declaration that the Defendant illegally erected high voltage electricity infrastructure on the Plaintiff's land and that the Defendant ought to adequately compensate the Plaintiff for the same and value the piece of land affected by the transmission lines among others.

The Defendant in paragraph 4 of its Written Statement of Defence pleaded that it shall raise preliminary objections on the ground that the suit is misconceived, frivolous and vexatious and discloses no cause of action.

12/11/21 The parties filed a Joint Scheduling Memorandum on 12<sup>th</sup> April 2021 where the agreed facts are that;

1. The Plaintiff is the owner of land under customary tenure at Gombe in Wakiso Town Council measuring approximately 50 by 100 feet.
2. The Defendant erected high voltage lines near the Plaintiff's land and as such she was one of the project affected persons.
3. The Plaintiff received a compensation of Ugx. 4,234,339/= from the Defendant.

### **Issues**

The issues as agreed by the parties under the Joint Scheduling Memorandum are as follows;

1. Whether the Plaintiff's suit against the Defendant is maintainable in law and discloses a cause of action.
2. Whether the Defendant's actions in the process of acquiring the Plaintiff's land for their project are legal.
3. Whether the compensation paid by the Defendant to the Plaintiff was adequate thereon.
4. What are the remedies available to the Plaintiff?

### **Representation**

The Plaintiff was represented by M/s Guma & Co Advocates

The Defendant was represented by UETCL.

12/11/21 At the hearing the Defendants applied to proceed with Issue No. 1 as point of law and the parties were directed to file written submissions.

**Issue: Whether the Plaintiff's suit against the Defendant is maintainable in law and discloses a cause of action?**

**1. Claim brought before the wrong forum:**

Counsel for the Defendant submitted that the suit is barred by law and as such it is not maintainable in law. He averred that the Plaintiff's suit is a challenge of the adequacy of compensation as demonstrated by the Plaintiff and the issues agreed under the Joint Scheduling Memorandum.

The Plaintiff in paragraph 4 (d), (e), (f), (g) Paragraphs 9, 10 and 11 of the Plaintiff pleaded that;

*"4 (d) That indeed in June 2018 the Plaintiff was paid a paltry sum of UGX .4,200,000/= and left the Defendants with a copy of her National Identify Card."*

*"4 (e) The Plaintiff to date is still unsure how the Defendant reached the figure of UGX .4,200,000/= as compensation."*

*"4(f) The Plaintiff's effort to enquire from the Defendant about the facts surrounding the valuation, compensation and details pertaining to the project were to no avail."*

*"4g) That despite the constant enquiries by the Plaintiff about the valuation of her land, the Defendant went ahead and erected the transmission lines in July 2018."*

*"9. It is also the Plaintiff's contention that any compensation to be meted out to the Plaintiff by the Defendant should be commensurate to the value of land affected by the project."*

*"10. The Plaintiff will argue that the payment of Ugx.4,200,000/= which she received was paid to her under very unclear circumstances"*



*and to date she seeks to know the basis upon which the same was arrived at."*

Counsel for the Defendant submitted that Section 67 (3) of the Electricity Act Cap 145 requires a licensee (UETCL) to do as little damage as possible to the land and environment when placing electric supply lines and to ensure prompt payment of fair and adequate compensation to all interested persons for any damage or loss sustained by reason of the exercise of those powers.

That the Electricity Act Cap 145 provides as follows under the cited sections;

- i) Section 70 (1) of the Electricity Act Cap 145 provides that questions as to entitlement to compensation for right of use or **the sufficiency of compensation** is to be determined as if the land had been acquired under the Land Act and the Land Acquisition Act.
- ii) Section 70 (2) of the Electricity Act Cap 145 provides that 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.
- iii) Section 3 (c) of the Electricity Act Cap 145 defines "Authority" to mean the **Electricity Regulatory Authority** (ERA) established under Section 4.
- iv) Section 70 (3) of the Electricity Act Cap 145 provides that a person aggrieved by the decision of the authority may within thirty days after the decision is made, appeal to the **Tribunal**.
- v) Section 3 (kk) of the Electricity Act Cap 145 defines "Tribunal" to mean the **Electricity Dispute Tribunal** established under Section 93.
- vi) Section 110 (3) of the Electricity Act Cap 145 any person aggrieved by the decision of the Tribunal may within 30 days from the date of the decision or order, **appeal to the High Court**.

Counsel for the Defendant submitted that it follows from the above provisions of the Electricity Act Cap 145 that the Plaintiff's claim is not maintainable since it ought to have been commenced before the Electricity Regulatory Authority, appealed to the Electricity Disputes Tribunal and as such it can only come to the High Court by way of an Appeal from the Electricity Disputes Tribunal's decision. He submitted that the suit is not maintainable before the High Court and that it should struck out with costs.

In reply, counsel for the Plaintiff submitted that nowhere in their written statement of defense did the Defendant point to challenging the jurisdiction of the court not to the suit being barred by virtue of the Electricity Act to avoid the Plaintiff being caught by surprise which was the intention of the framers of Order 6 Rule 6 that requires that all pleadings must disclose matters but not to make a general claim that the suit is misconceived, frivolous and vexatious is ambiguous. He further submitted that the defense of lack of jurisdiction should have been specifically pleaded as required under Section 16 of the Civil Procedure Act and Order 9 Rule 3 (g) of the Civil Procedure Rules.

A similar situation was considered by the Supreme Court ***URA Vs Rabbo Enterprises (U) Ltd & Another SCCA No. 12 of 2004*** but it was in relation to the jurisdiction of the Tax Appeals Tribunal as opposed to the original jurisdiction of the High Court. In that case Lady Justice Lillian Ekirikubinza-Tibatema in her lead judgment observed that-,

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"It is apparent from a look at various provisions of the Act that proceedings before the Tax Tribunal are treated as judicial proceedings....I am also emboldened in my opinion by Section 27 of the Tax Appeals Tribunal Act which provides that a party



*dissatisfied with a decision of the Tribunal may appeal to the High Court.... It would be bizarre that the legal regime would give the High Court dual jurisdiction. The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunals and only taken before the High Court on appeal."*

Applying the above reasoning of the learned Justice to the present suit that has similar facts and legal provisions relating to the Electricity Disputes Tribunal, I agree with counsel for the Defendant the Plaintiff is at the wrong forum and should have first challenged the amount paid to her by appealing to the Electricity Disputes Tribunal and as such can only come to the High Court by way of an Appeal from the Electricity Disputes Tribunal's decision.

## **2. Limitation:**

The second part of the objection raised by Counsel for the Defendant was that the Plaintiff's suit is barred by law. He averred that the Plaintiff's suit is a challenge about the sufficiency of compensation amount.

**Section 13 of the Land Acquisition Act Cap 226** requires a person aggrieved with the amount of compensation awarded to him or her to appeal to the High Court within 60 days from the date of the award. It provides thus;

*"Where an award is made under Section 6, any person awarded or claiming that he or she should have been awarded compensation may within sixty days of the date of the award appeal to the High Court by way of objection to any or all of the following:-*

(a) **The total amount of compensation awarded**

(b) *The apportionment of compensation.*

*(c) Any failure or refusal of the assessment officer to include him or her in the apportionment. ”*

That the Plaintiff pleads in Paragraph 4 (d) and 4 (e) of the Plaintiff that in June 2018 she was paid a paltry sum of UGX. 4,200,000/= and left the Defendant with a copy of her National Identity Card and that the Plaintiff to date is still unsure how the Defendant reached the figure of Ugx. 4,200,00/= as compensation. That the court record shows that this suit was filed on the 14<sup>th</sup> December 2018 which is six months from (June 2018) the pleaded date of receipt of compensation awarded by the Defendant.

Counsel for the Defendant submitted that relying on Section 13 of the Land Acquisition Act Cap 226 which is referred to by the Electricity Act Cap 145 under Section 70 (1), this action ought to have been commenced not later than August 2018 and the Plaintiff in the Plaintiff did not plead disability or any grounds of exemption. That the Plaintiff on the face of it should be rejected as required under Order 7 rule 11 (d) as well as Order 7 Rule 6 of the Civil Procedure Rules which are couched in mandatory terms.

The provisions of Order 7 rule 11 (d) of the Civil Procedure Rules state as follows-

*“The Plaintiff shall be rejected in the following cases:*

*(d) Where the suit appears from the statement in the Plaintiff to be barred by any law. ”*

Further, Order 7 Rule 6 of the Civil Procedure Rules provides:

*“Where the suit is instituted after the expiration of the period prescribed by law of limitation, the plaintiff shall show the grounds upon which exemption from that law is claimed. ”*



The provisions above are framed in mandatory terms. Further, I am bound by the decision of the Supreme Court in the case cited by counsel for the Defendant of ***Waimo Vs Attorney General 1990-94 EA 603*** where it was held that the rules under Order 7 Rule 6 and Order 7 Rule 11 (d) of the Civil Procedure Rules are mandatory and a plaintiff that does not show grounds of exemption from limitation outside the prescribed should be rejected.

The arguments by counsel for the plaintiff that a defendant wishing to rely on points of law is required to set out such points of the law in the written statement of defence before the preliminary issue is regarded as properly or that he should have filed a formal application cannot hold since the issue of limitation is a matter of law and an illegality brought to the attention of court cannot be ignored as held in the case of ***Makula International Vs His Eminence Cardinal Emmanuel Nsubuga Civil Appeal No. 41 of 1981***. In any case the parties agreed on the issues under the Joint Scheduling Memorandum, the first of which was whether the present suit is maintainable in law and discloses a cause of action.

The purpose of the law of limitation is to put an end to litigation. This law is applied by courts strictly. **In Re Application by Mustapha Ramathan for Orders of Certiorari, Prohibition and Injunction, Civil Appeal No.25 of 1996** Barko, JA, as he then was stated as follows-

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“Statutes of limitations are in their nature strict and inflexible enactments. Their overriding purpose is interest reipublicae ut sit finis litum, meaning that litigation shall be automatically stifled after fixed length of time, irrespective of the merits of the particular case..... the statute of limitations is not concerned with merits. Once the axe falls, it falls, and a defendant who is



*fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights."*

I therefore find that the cause of action under the plaint is barred by Section 25 of the Limitation Act. I uphold both parts of the preliminary objection.

Accordingly, I find merit in both issues raised with regard to the wrong forum and on Limitation raised under the preliminary objection and the suit is dismissed with costs to the Defendant.

It is so ordered.



CORNELIA KAKOOZA SABIITI  
JUDGE

Date: 12<sup>th</sup> November 2021