

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. 20 OF 2021

1. RUZINDA K. JACKSON :::::::::::::::::::::::::::::::::::::::PLAINTIFFS

5 **2. RUZINDA MEMORIAL INSTITUTE OF
CATERING AND HOTEL MGT LTD (RUMICAT)**

VERSUS

1. RURAL ELETRIFICATION AGENCY

2. MERIDAN SALES AND SERVICES LTD

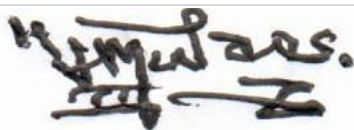
10 **3. ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: DEFENDANTS**

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

The plaintiffs brought this suit against the defendants jointly and severally for a declaration that the defendants are trespassers on the suit land, a permanent
15 injunction restraining the defendants from further trespass, an order of compensation for the value of the suit land of shs 200,000,000/=, an order for compensation for loss of earning to the tune of shs 5,571,000,000/=, an award of general and exemplary damages and costs of the suit.

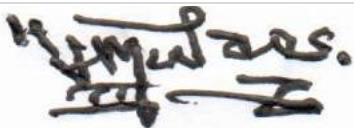
It was contended by the 1stplaintiff that he is the owner of land at Bwera 2, Kinyungu
20 Trading Centre, Kicheche Sub County, Kamwenge District. That in 2012, the 1st plaintiff got knowledge that the 1st and 2nd defendants who are agents of the third defendant trespassed on his land and erected thereon poles and electricity



infrastructure without his consent. That the 1st and 2nd defendant constructed a three phase power line over the plaintiff's land which he had rented to the 2nd defendant and the wires thereof passed above the plaintiff's structures on the suit land. That the plaintiff raised objections against the defendant's actions which were ignored. It was contended that as a result of the alleged trespass and activities of the defendant, the plaintiffs closed all their activities on the suit land since it was no longer habitable. That the defendants action constitute trespass as such he sought the reliefs in the plaint.

The defendant denied the allegations by the plaintiffs. The 1st and 3rd defendant denied the allegations of trespass and contended that no danger was posed by the activities of the suit land or to the business by the 2nd defendant. They also denied the plaintiffs being entitled to any compensation or the alleged trespass or possession of the suit land. The duo asked court dismiss the suit for want of merit.

The 2nd defendant also denied the allegations by the plaintiff. They contended that they were contracted by the government of the Republic of Uganda represented by Rural Electrification Board in 2010 to construct high voltage lines and associated low voltage power networks along Ibanda – Kabajugera- Kamwenge and Muhanga – Kamwenzi. That they entered and constructed power networks on all land along the contract network route under the authority of the Government of Uganda and in accordance with the contract. That the 2nd defendant claims indemnity from government in case of any loss or liability arising from the contract. That they were not responsible for compensation of any land owners under the law and the contracted she executed with government. They thus asked court to have the case dismissed with costs.



At trial, learned counsel for the 2nd raised a preliminary objection based on a point of law asking court to strike out the suit. The issues to be considered in resolution of the point of law are: (1) whether or not the suit at hand is proper before court; and (2) whether the plaintiffs have a cause of action against the 2nd defendant.

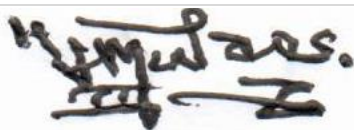
5 ***Representation and Hearing:***

Mr. Atwine Usmand appeared for the 2nd defendant while **Mr. Murungi Godfrey** appeared for the plaintiff. Learned counsel addressed me on the merits of the preliminary points of law by way of written submissions which I have considered.

2nd defendant's submissions:

10 Learned counsel for the 2nd defendant contended that the suit was pre-mature before court as court did not have jurisdiction by virtue of Section 93 Electricity Act that vested jurisdiction in the Electricity Disputes Tribunal. Learned counsel cited ***URA vs Rabbo Enterprises & Anor, SCCA No. 12 of 2004*** where the Supreme Court guided that where a law vests jurisdiction in a specific body, a party cannot invoke
15 the unlimited jurisdiction of the High Court to justify jurisdiction by the High Court over such matters. He argued that section 93 of the Electricity Act vests the original jurisdiction over all matters relating to the electricity sector in the Electricity Disputes Tribunal. That the plaintiffs' claim as pleaded under 7 of the plaint was founded on trespass by construction of an electricity transmission line thus
20 jurisdiction by virtue Section 93 and 103 of the Electricity lay with the tribunal and not the High Court. He thus contended that the current suit was premature and as such ought to be dismissed with costs.

Learned counsel also submitted that the 2nd defendant was an agent of government who was the disclosed principal. Counsel cited the case of ***Kapeka Coffee Works***

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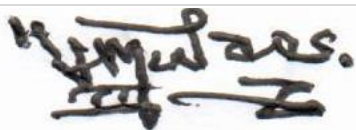
Ltd Vs. Npart, CACA No. 3 of 2000 where it was held that: “*In determining whether a plaint discloses a cause of action, the court must look at the plaint and the annexures thereto if any and nowhere else.*”

That the question whether a plaint discloses a cause of action is determined upon perusal of the plaint and the annexure thereto. Counsel cited the case of *Abdulrahman Elamin Vs Dhab Group & 2 others HCCS No. 432 of 2012* citing the decision of Justice *Arach Amoko* in *Phenehas Agaba vs Swift Freight International Ltd, HCCS No, 143 of 2000* where it was stated that a suit was unsustainable against a defendant who was a mere agent of a disclosed principal. Learned counsel argued that the since the 2nd defendant was a disclosed principal of government, the plaintiffs had no cause of action as an agent as such the plaintiff discloses no cause of action against the 2nd defendant.

Learned counsel also contended that the suit at hand abated. That the plaintiff filed this suit on 10th June 2019 and the last pleading was on 11th July 2019. That the matter was subjected to court mediation on 14th March 2020 the file having been transferred from Kampala to Fort Portal High Court Circuit. That at no time after mediation, did the plaintiffs take out summons for directions and as such the suit abated under Order X1A rule 2 of the Civil Procedure Rules as amended. He thus prayed that court declared so.

Plaintiffs’ submissions:

Mr. Murungi submitted in reply that the provisions of *Sections 109, 93 and rule 4 (1) of the Electricity Disputes Tribunal (Procedure) Rules 2012* stipulates the jurisdiction of the tribunal and that matters of trespass do not fit with those to be heard and determined by the tribunal. That interpreting and construing trespass as

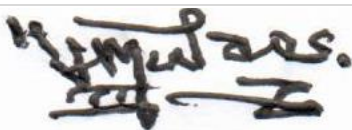


part of actions falling under the Act would be giving the Act a wide scope than intended. That the case of *URA Vs. Rabbo Enterprises & Anor SCCA No. 12 of 2004* cited by counsel for the defendant is distinguishable from the case before hand. That the dispute before court is for trespass and not matter relating to or premised on the electricity sector. That the decision concerned tax disputes and not trespass.

That in *Nansubuga Nadia V. Uganda Electricity Transmission Company Ltd Civil Suit No. 1013 of 2018*, a similar objection was sustained because the claim was challenging the figures assessed for compensation and not trespass like the one at hand and as such was not applicable. That Article 139 (1) of the Constitution gives the High Court unlimited original jurisdiction in all matters and Section 109 of the Electricity Act is directory and not mandatory and does not affect the unlimited jurisdiction of the High Court. Counsel asked court to overrule this point of law.

Learned counsel contended that the plaintiff enjoyed a right to sue whoever he desired. That he was privy to the contract between the 2nd defendant and the 1st defendant and as such the plaintiffs were right to sue both. That the claim is for trespass and the plaintiffs had the right to sue whoever trespassed on the suit land. That under Order 1 rule 9 of the Civil Procedure Rules, misjoinder of parties would not defeat a suit, and as such the same should be heard on merits.

Learned counsel contended order XIA rule 2 of the Civil Procedure Rules as amended does not apply to the facts at hand. That the delay to take out summons for directions was negligence of counsel which should not be visited on the innocent litigant. That in *Seruwu Vs. Swangz Avenue Limited, HCCA No. 39 of 2021*, *Mubiru J* observed inter-alia, that the order applies when the suit cannot be abated. That in the instant suit, the plaintiffs made efforts to progress the suit as such the



point of law does not arise and thus this point of law should be overruled and the case heard on merits.

In rejoinder, counsel for the 2nd defendant insisted that section 109 of the Electricity Act and rule 7 of the tribunal applies to the case at hand. That the suit was wrongly
5 filed in the court as such he asked court to uphold the point of law and strike out the suit.

CONSIDERATION BY COURT:

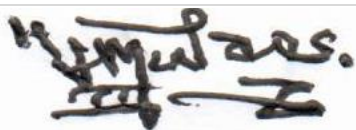
Section 67 of the Electricity Act Cap. 145 provides for the power of licensee to use
10 land and states as follows:

(1) A licensee authorised by the authority either generally or on a particular occasion may place and maintain electric supply lines in, over or upon any land and for that purpose it shall be lawful, upon written authorisation by the authority, for the licensee or his or her representative—

15 *(a) at all times, on reasonable notice, to enter upon any land and put up any posts which may be required for the support of any electric supply lines;*

(b) to fasten to any tree growing on that land a bracket or other support for the line;

20 *(c) to cut down any tree or branch which is likely to injure, impede or interfere with any electric supply line; and*



(d) to perform any activity necessary for the purpose of establishing, constructing, repairing, improving, examining, altering or removing an electric supply line, or for performing any other activity under this Act.

5 *(2) A licensee shall not, in the exercise of the powers conferred under this section, except with the consent of the owner of the land under, over, along, across, in or upon which any electric supply line is placed—*

10 *(a) acquire any right other than that of the user of the land under, over, along, across, in or upon which an electric supply line or post is placed and for the reason of that exercise;*

(b) exercise those powers in respect of any land vested in or under the control or management of a local government or other public authority, except in accordance with the procedure set out in section 68.

15 *(3) A licensee shall do as little damage as possible to the land and to the environment and shall ensure prompt payment of fair and adequate compensation to all interested persons for any damage or loss sustained by reason of the exercise of the powers under this section.*

20 *(4) A licensee shall, except for the maintenance or repair of an electric supply line, before entering any private land for the purposes specified under subsection (1), give sixty days' notice to the owner of the land, stating as fully and accurately as possible the nature and extent of the acts intended to be done.*

(5) The owner of the land for the purposes specified in subsection (1) may, within thirty days after the receipt of the notice under subsection (4), lodge a written objection with the authority; and the authority shall specify a date to inquire into the objection.

5 *(6) If no objection is lodged within the time specified under subsection (4), the licensee may enter the land and do all or any of the acts specified in the notice given under subsection (4).*

10 *(7) The authority may, taking into account the conclusions of any inquiry under subsection (5), authorise either unconditionally or subject to such terms and conditions as it considers fit, any of the acts mentioned in the notice given under subsection (4).*

(8) A person aggrieved by the decision of the authority may, within sixty days, appeal to the tribunal.

15 *(9) A licensee authorised by the authority under this Part, or whose licence falls under section 52 shall, for the purposes of this Act, be an authorised undertaker within the meaning of the Land Act. [Emphasis added].*

Section 69 (1) of the Act further provides thus:

20 *“On application by the owner of land in, over or upon which a licensee has placed an electric supply line under section 67, the authority may, upon presentation of convincing evidence, order the licensee, subject to any condition that may be imposed by the authority, to alter the position of the line or remove it.”*

Additionally, Section 70 of the Act provides that:

5 *(1) Any question as to the entitlement of any person to compensation for right of use or as to the sufficiency of compensation under section 67(3) shall, in default of agreement, be determined as if the land had been acquired under the Land Act and the Land Acquisition Act.*

10 *(2) 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, except that the time for lodging the claim may be extended on application to the authority, showing sufficient reasons for the extension.*

(3) A person aggrieved by the decision of the authority may, within thirty days after the decision is made, appeal to the tribunal.

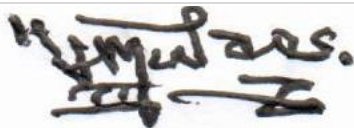
The plaintiffs pleaded under paragraph 7(a),(b),(c),(d)(e), (a) and (f) thus:

15 *(a) The 1st plaintiff is the owner of land situated at Bwera 2, Kinyungu Trading Centre, Kicheche Sub-county and Kamwenge District.*

(b) In early 2012, the 1st plaintiff got to know the 1st defendant and 2nd defendants and their agents had trespassed on his land by erecting there on poles and other electricity infrastructure without his knowledge.

20 *(c) The 1st and 2nd defendants constructed a three-line phase over the plaintiff's buildings.*

(d) The 1st plaintiff immediately raised an objection in respect of the said trespass on his land by the defendants on account that the manner in which



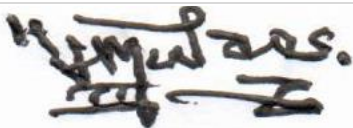
the construction of the electricity lines was made is glaringly inconsistent with the rights of land owner and fatal to the businesses of the plaintiffs.

5 *(e) The 2nd plaintiff business ultimately closed down due to the fact that it would be dangerous for any humans to utilize the buildings that have a three phased electricity line hovering above.*

(f) The plaintiffs wrote to the 2nd defendant a letter of intention to sue requesting the 3rd defendant to re-direct poles and remove power lines from the plaintiff's property.

10 The plaint reveals that the plaintiff's claim was centered on compensation for his land on which the 1st and 2nd defendants established a three phase power line. The plaintiff sought among others, compensation for land where the defendants constructed a three phase electricity line without authorization or prior compensation and loss of earning for the activities which were affected. Further that the manner in
15 which the electricity line was constructed, it was inconsistent with the rights of the owner and they wrote to the 2nd defendant requesting the said line to be re-directed and have the poles removed from the plaintiffs' property. The plaintiffs further sought to recover compensation for owing to the damage to the property and denied use of the suit land. These activities in my view fall within the scope of the above
20 provisions and cited remedies. It is my considered opinion that whereas the claim in the plaint is presented as a tort of trespass, the particulars of the claim squarely bring the claim under the ambits of the Electricity Act.

If the wrote to the authority (2nd defendant) asking for the removal of the power line and no action was done, the appropriate step would have been to lodge a formal

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complaint with the authority and demand a decision on the subject matter and if none was made or one was made contrary to the interests of the plaintiffs, then they would appeal to the tribunal under section 69(4) of the Act.

I am alive to section 109 of the Act that gives the Electricity Disputes Tribunal
5 unlimited jurisdiction over all matters arising from the electricity sector.

Where the law provides for alternative mechanisms of resolving disputes, the same should be followed to the latter unless it is proved to be practically impossible. In the persuasive dicta in *Mutanga Tea and Coffee Company Ltd v Shikara Ltd and Another Malindi Civil Appeal No. 54 of 2014 [2015] eKLR* the Court of Appeal of
10 Kenya guided thus:

Secondly, such alternative dispute resolution mechanisms normally have the advantage of ensuring that the issues in dispute are heard and determined by experts in the area; and that the dispute is resolved much more expeditiously and in a more cost effective manner.

15 Makhandia JA in *Kibos Distillers Limited & 4 others v Benson Ambuti Adeg & 3 others Civil Appeal No. 153 of 2019 [2020] eKLR* also held;

20 *“To this extent, I find that the learned judge erred in law in finding that the ELC had jurisdiction simply because some of the prayers in the petition were outside the jurisdiction of the Tribunal or National Environmental Complaints Committee. A party or litigant cannot be allowed to confer jurisdiction on a court or to oust jurisdiction of a competent organ through the art and craft of drafting of pleadings. Even if a court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other*

competent organs that have legislatively been mandated to hear and determine a dispute. Original jurisdiction is not an ouster clause that ousts the jurisdiction of other competent organs. Neither is original jurisdiction an inclusive clause that confers jurisdiction on a court or body to hear and determine all and sundry disputes. Original jurisdiction simply means the jurisdiction to hear specifically constitutional or legislatively delineated disputes of law and fact at first instance. To this end, I reiterate and affirm the dicta that in Speaker of the National Assembly v James Njenga Karume [1992] eKLR where it was stated that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

Further in United Millers Limited v Kenya Bureau of Standards & 5 others [2021] eKLR the Court of Appeal held;

In Council v Trans Mara County Council & Another [2000] eKLR). And in the case of Godfrey Muthinja Kabiru, (Supra) this Court stated thus:

We may further add that in the case of Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others (2019) eKLR the Court in addressing similar circumstances was emphatic that:

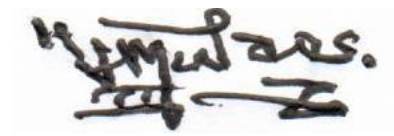
“In pursuit of sound legal principles, it is our disposition that the disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of the superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction

to determine profound questions of law, first opportunity had to be given to the relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute”.

5 Where the law provides for a clear and elaborate manner of resolution of disputes, a party must exhaust those legal remedies before recourse is made to the courts of law. I therefore find that this claim was prematurely brought by the plaintiffs. I therefore uphold this preliminary point of law and find no need to delve into the remaining aspects of the matter. Accordingly:

- 10 **1. This suit is hereby dismissed.**
 2. Each party shall bear their own costs.

It is so ordered.



Vincent Wagona

15 **High Court Judge / FORT-PORTAL**

DATE: 11th/10/2023

