

**THE REPUBLIC OF UGANDA  
THE ELECTRICITY DISPUTES TRIBUNAL  
IN THE MATTER OF EDT COMPLAINT NO.019 OF 2014**

**BETWEEN**

**KWESIGA VIVIAN .....COMPLAINANT**

**AND**

- |   |          |                   |
|---|----------|-------------------|
| <b>1. UGANDA ELECTRICITY DISTRIBUTION COMPANY LTD<br/>2. ATTOENEY GENERAL OF REPUBLIC OF UGANDA<br/>3. THE LIQUIDATOR, UGANDA ELECTRICITY BOARD</b> | <b>}</b> | <b>RESPONDENT</b> |
|---|----------|-------------------|

**RULING**

**TRIBUNAL CORAM:**

- |                           |                    |
|---------------------------|--------------------|
| 1. Charles Okoth- Owor    | - Chairperson      |
| 2. Anaclet Turyakira      | - Vice Chairperson |
| 3. Eng. Dr. Moses Musaazi | - Member           |

In the Course of the Tribunal proceedings in **Complaint EDT No. 19 of 2014** brought by Vivian Kwesiga as Complainant and the Respondents shown above; the first Respondent Uganda Electricity Distribution Company Ltd through their in-house Counsels, Robert Kiiza and Dorothy Mubiru on 18<sup>th</sup> July 2018 raised a Preliminary objection to the continuance of the consideration of this Complaint on the ground that the Complainant's claim is barred by:

- (a) The Limitation Act and;
- (b) Prescription

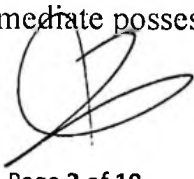
The point of contention at this point became **whether the claim is time barred by either or both the Limitation Act and Prescription.**



Counsel Kiiza submitted that **Section 3 (1) (a) the Limitation Act, Cap 80 Laws of Uganda** provides that no action founded on tort or contract shall be brought after the expiration of 6 years from the date on which the cause of action arose. Referring to their joint scheduling memorandum, he stated that it was an agreed fact that the power lines over the claimant's property comprised in Block 3 Plot 193 at Ndorwa Karubanda, Kabale District was constructed in 1997 and also argued that the Complainant's claim is based on tort. He argued that the claim collapses because it was filed in 2014, a period of 17 years from the time the power line was constructed, which period is way out of the time limits of 6 years prescribed by the Limitation Act for actions based on tort as this claim was based.

He further argued that what he described as the **"Equitable doctrine of Prescription"** also applied in this instance. He stated that the said doctrine provides in essence that; where a person relaxes too long , to bring a claim or right; that claim or right is extinguished. He cited the case of **Nalongo Nekaka V Kesi Bagalaaliwo HCCA 84/2012** which he claimed bolstered the Respondents claim that the Complainants claim was based on tort of trespass and thus falls within that ambit of Section 3(1) (a) of the Limitation Act and therefore is statutorily time - barred.

He further cited to support his argument **High Court Civil Appeal No.5 of 2010; Omunga Bakhit V Agrasiela, Alias Daktari** paragraph 30 on page 5 thereof and paragraphs 20 to 25 on page 6 of the Judgment of Hon. Justice Stephen Mubiru. The said paragraphs stated that *"the Law of Limitation guarantees that people should be free to get on with their lives or business without the threat of Stale claims being made. The Limitation Act also encourages claimants to bring their claims promptly and not ..... "to sleep on their rights;"* and also **Jandu V. Kirpal** and another [1975] EA 225 at 322 as follows; 'By adverse possession.... is meant possession by a person holding the land on his own behalf or on behalf of some person other than the true owner, the true owner having immediate possession.



If by this adverse possession the statute is set running, and it continues to run for 12 years, then the title of the owner is extinguished, and the person in possession becomes the owner'. He consequently prayed that on basis of both the Limitation Act and the 'equitable doctrine of prescription', the tribunal should find that the Complainant's claim is barred in Law and dismiss it.

Counsel Pius Olaki, for the Complainant responded that the submission on prescription was not properly conceived. He argued that for prescription to apply, two essential elements must exist; one was that the Parties must be adjoining land owners and that there must be a dominant and servient category of land ownership: that for prescription to arise, the owner of the dominant tenement ought to have been using the land from the servient tenement unchallenged and without permission for a long time. He submitted that since there were no such tenements in this matter; the submission of prescription was not properly conceived and did not apply.

On the objection that was raised relating to Limitations: Counsel Olaki submitted that the Complainant's action was not for recovery of land but for compensation arising out of utilization of his land by the 1<sup>st</sup> Respondent in the course of distribution of electricity; That the claim was only before the tribunal because the subject matter was related to the electricity sector.

He submitted that the Complainant has remained in possession of his land at all times although unable to utilize it, and is only seeking compensation from the distribution Company for utilization of this economic asset, from which the Respondent is deriving economic benefits.

He further submitted that even if this Complaint was to be treated as a case of trespass to land; the Complainant would not be time barred by the Limitation Act, because this would be a Complaint whose facts give rise to a cause of action of continuous trespass and, in any case the Limitation Act provisions cited do not confer ownership of the land in question unto the Respondent. He concluded that neither the Limitation Act nor Prescription applied.

Counsel Nazziwa who represented the Uganda Electricity- Board in Liquidation associated herself with the submission made by Counsel Kizza and prayed that the preliminary objection be upheld; the action having been brought 17 years from the date when the cause of action arose and urged the Tribunal to dismiss the Complaint as against the 3<sup>rd</sup> Respondent.

Counsel for the Attorney General did not take a position on the matter of the preliminary objection.

Counsel Kiiza in response to Counsel Olaki's submissions argued that although the Tribunal is a specialized body that handles disputes relating to the electricity sector, yet it operates within the framework of the laws of Uganda. That much as the Complainant is in possession of his land but the fact that Uganda Electricity Board erected lines over the land in question nevertheless puts the matter within the realm of the law of torts and in this particular respect, the tort of trespass to land.

He submitted that this fact puts the Complainant within the ambit of **Section 3(1) (a) of the Limitation Act**, which bars an action founded on tort to be brought after the expiration of **6 years** from the date on which the cause of action arose and that this limitation applied to a continuing tort.

The Tribunal observes that the preliminary objection brought forth by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents has the potential to bring Complainant **EDT NO.019 of 2014** to an end and therefore deserves careful consideration.

The objection is premised on the provisions of the **Limitation Act Cap 80 Laws of Uganda** specifically **Section 3(1)(a)** which states among others that "**the following actions shall not be brought after the expiration of six years from the date on which the cause of action arose-(a) Actions founded on contract or on tort**" The tribunal hastens to add that **Section 5** of the **Limitation Act** also places a fixed limitation period of 12 years for actions for recovery of land. The High Court in the case of **Dima Dominic Paro V Inyani &Anor HCCA 17/2016** stated that;

*“This limitation is applicable to all suits in which the claim is for possession of land, based on title or ownership i.e, proprietary title, as distinct from possessory rights”*

Counsel for 1<sup>st</sup> Respondent argued that the facts of the case as stated in the joint scheduling memorandum and also pleaded by the Complainant puts the Complainant in the realm of a tort of trespass to land, and consequently within the ambit of the Limitation Act as stated above.

We observed that Mr. Kwesiga, the Complainant in his pleadings and Witness Statements filed on 27/06/2018 stated that *“in the year 1997, the Uganda Electricity Board constructed a 33KV power supply line over our property without our notification, consent or compensation”*.

He also states in paragraph 4 of his said Witness Statement “that in 2014, he lodged a Complaint against the 1<sup>st</sup> Respondent for trespass and failure to compensate them for utilizing their property”.

It is also observed by the tribunal that all Parties agree that the power line constructed in 1997 has since construction, remained operational. It is our understanding that the tort of trespass to land is a wrong against possession and consists of the act of:

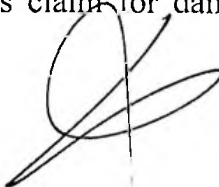
- (a) Entering upon land in the possession of another without permission and,
- (b) Remaining upon such land; or
- (c) Placing or projecting any object on over or upon it, in each case without permission or a right to do so. It is also our understanding that the act complained of must be a physical interference with the Complainant’s land and the Complainant must usually have a present right to exclusive possession of the land.

The Complainant must prove a possessory interest in the land and the entry by the defendant (read Respondent) unto the Plaintiff’s land (read Complainant) must be unauthorized- see: **Dima Domnic Poro V Inyani & Anor HCCA 17/2017.**

The law on trespass was well stated in the case of **Justine EM.N.Lutaaya Vs. Civil Appeal No.11 of 2002 (SC) Stirling Civil Engineering Company**. As follows: *"Trespass to land accrues when a person makes an unauthorized entry upon land, and thereby interferes or portends to interfere, with another person's lawful possessions of that land. Needless to say, the tort of trespass to land is committed.....against the person who is in actual or constructive possessions of the land..."* The case was cited with approval in the case of **Nalongo Nalwoga Nakazi vs Salongo Kesi Bagalaaliwo HCCA 084/2012**, which also stated that a possession did not mean physical occupation; rather the slightest amount of possession would suffice".

Our review of the facts pleaded in this Complaint leads us to the opinion that the facts pleaded give rise to a cause of action of the tort of trespass to land. The Complainant together with the others are joint owners of a developed property comprised in Plot 193 Block Ndorwa Kabale to which they also had or have a present right to exclusive possessions and are in possession and have been in possession. The Complainant also holds a legal title to the land, thus in possession. In 1997, the Uganda Electricity Board admittedly constructed a 33KV power supply lines over the Complainant's property described above, and thus interfering with the Complainants lawful possession of that land.

It is the Complainant's testimony and it is pleaded that this was done without his/their consent and notice or compensation. It is agreed by all Parties that the power line has since construction in 1997 remained operational. It is our understanding that it is by reason of the aforesaid trespass that the Complainant is alleging wrongful deprivation of the use and enjoyment of the property through trespass thereby suffering loss and damages, thus his claim for damages from 1997 to the date of award.



When we place the above facts as admitted by the Parties in the context of Section 3(1) (a) of the Limitation Act. Cap80.

We are convinced that this Complaint (**EDT 019/2014**) is an action in the tort of trespass to land and therefore on the face of it falls within the Limitations prescribed by the provisions of Section 3(1) (a) of the said Limitation Act.

The lines were constructed in 1997 allegedly without the consent of the Complainant and without compensation, thus the entry was not consented to or authorized; while the Complaint was only filed in 2014; 17 years after the cause of action arose. Section 3(1) (a) of the said Limitation Act stipulates a time limit of 6 years within which an action in tort must be brought.

In the case of **F.X Miramago Vs Attorney General [1979] HCB 24** cited in **High Court Civil Appeal No.0005 of 2010: Onunga Bakhit Vs Agrasiela Daktari**; it was stated that the period of limitation begins to run as against a Plaintiff (read Complainant) from the time the cause of action accrued until when the suit (read Complaint) is actually filed. Once a cause of action has accrued, for as long as there is capacity to sue, time begins to run as against the Plaintiff read (Complaint). Based on the above state facts and case law and in absence of factors envisaged by the said Limitation Act to confer an extension of time, Complaint No. EDT 019 of 2014 on the face of it is time barred by the Limitation Act.

If our finding was that this suit was for recovery of land; Section 3(1) (a) of the Limitation Act would in our opinion on the face of it render this Complaint time barred, in that it was filed 17 years after the original alleged unlawful entry; i.e when the cause of action for recovery of land arose. Counsel for both Parties are however arguing that this was trespass.

There however exists in the tort of trespass a doctrine of **continuous trespass** and if applied to this case, may produce different results. The principle or concept is to the effect that the continuation of a trespass constitutes a fresh trespass and is actionable

per se. High Court in **Dima Domnic Poro V. Inyani & Anor HCCA 17/2016** stated that *“with the tort of trespass to land, the Court treat the unlawful possession as a continuing trespass for which an action lays for each day that passes”*.

Court in this same case stated that; *“save for Continuous torts.... a cause of action barred by the statute of limitation may not be revived”*.

The case of **Christopher Katongole Vs Yusufu Ssewanyana (1990-1991) KALR 41** cited with approval in the case **Oola Laloba V Okema Jakeo Akech HCT 02-CV 0020-2004** by Hon. Justice Kasule, as he was then, stated that *“trespasser is one who remains in possession of the land against the will of the owner and that trespass is a continuous tort.... Trespass being a continuous tort, there was therefore no basis ....to hold that the Appellant’s suit was time barred by reason of the Limitation Act”*. In that case the Court found it *‘sufficient that the cause of action and the evidence all centered on the continuous tort of trespass and as such the case could not have been caught by the provisions of the Limitation Act’*

We are inclined to draw the inference that this case is analogous to the Complaint before the Tribunal. Having determined that the cause of action in the Complaint before the Tribunal is centered on the tort of trespass to land and also considering that the Parties in their joint scheduling memorandum all agreed that the power line so constructed on the Complainant’s land in question has since construction remained operational; we believe that this is a continuous tort of trespass and we hold the view that this Complaint is similarly not caught by the previous of **Section 3 of the Limitation Act**. This view is supported by; in **Amin Aroga vs Haji Muhamad Anule HCCA NO.0010 of 2016** which cited **Eriya Safu Vs Wilberforce Kuluse (1994) 111 KALR 10** as stating that *“... the tort of trespass to land is a continuing tort, such that the law of Limitation does not apply to it in a strict sense”*.

We understand “Prescription” to mean the vesting or extinguishment of a substantive right by reason of lapse of time, and specifically the process of acquiring rights and in particular obtaining a good title to land as a result of the passage of time.

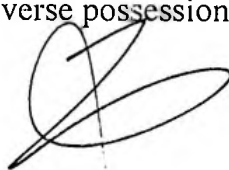


By this process one acquires a title to a property because of continuous occupation of that property. This particular limb of the preliminary objection which the 1<sup>st</sup> Respondent referred to as “an equitable doctrine” was not elaborated upon and convincingly explained by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, to the Tribunal.

The said Respondents did also not address the Tribunal as to how equitable prescription might have arisen in this instance and as to the substantive right or title that was consequently acquired or extinguished on this titled piece of land by the alleged equitable doctrine of prescription; for we believe that unlike Limitation, which simply bars judicial remedies; prescription not only prescribes the period at the expiry of which, the judicial remedy is barred, but also that a substantive right is acquired or extinguished.

It is also noted that the Complainant stated in his Complaint to the Tribunal filed in December 2014, that there was never consent or permission on their part for the construction of the power lines and that several communications had been written to the party concerned (the 1<sup>st</sup> Respondent) to either compensate the Complainant adequately or remove their materials but this demand was never responded to. The 1<sup>st</sup> Respondent in its reply accepts having received these letters of protests and demand from the Complainant but also denies liability or Responsibility to compensate or remove the lines. This can not be said to be “quiet and uninterrupted” possession of land, which we believe would be an element of prescription, and at this point of time, the 1<sup>st</sup> Respondent who primarily raised the Preliminary objection has not claimed or asserted substantive rights or title for the Respondent to the Complainant’s land in question.

We are also of the opinion that having found that this was a case of alleged “continuous trespass”; the Complainant would not be barred or limited from pursuing his claim on account of prescription or adverse possession

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We are in the foregoing circumstances not inclined to uphold the preliminary objection on the ground of statutory limitation or prescription.

Hearing of this Complaint will accordingly proceed.

We so order.

Dated at Kampala this..... day of ..... 2019

CHARLES OKOTH-OWOR

.....  
Chairperson

ANACLET TURYAKIRA

.....  
Vice Chairperson

DR. ENG. MOSES MUSAZI

.....  
Member