

THE REPUBLIC OF UGANDA
IN THE ELECTRICITY DISPUTES TRIBUNAL
COMPLAINT NO. EDT 007 OF 2017

WATUWA JIMMY J. COSMAS

VERSUS

ELECTRICITY REGULATORY AUTHORITY

COMPLAINANT

RESPONDENT

Received on the 05th / 08 / 2018
[Signature]

JUDGMENT

*Before: Charles Okoth Owor – Chairman, Anaclet Turyakira-Vice Chairman,
Moses Musaazi - Member*

Brief Facts

Mr. Watuwa Jimmy Cosmas – the Complainant filed a complaint in the tribunal on 21st February 2017. His complaint was as follows:-

- (i) He was denied an installation permit by ERA
- (ii) In 2014, his permit was deliberately delayed.
- (iii) As a result of the above, he did not work and earn income.
- (iv) In 2016, he applied for a permit in January but the same was deliberately delayed till April, 2016.

The Complainant contends that the above amounted to

- (i) Injury of his right to practice his profession and business
- (ii) Infringement of his right to earn income and livelihood.
- (iii) Character assassination and professional negligence and unfair treatment.

As a result he sought recovery of

- (i) ugx.780,000/= being payment as at the end of February, 2017
- (ii) Special damages of ugx.35,075,185/=
- (iii) General damages
- (iv) Costs.

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Received by:
Karuhanga Robert
[Signature]
10/8/2018

In response to the Complainant, the Respondent ERA stated

- (a) That it is a body established under the Electricity Act 1999 inter alia with mandate to issue electrical installations permits within the provisions of the Electricity (Installation Permits Regulations) 2003.
- (b) That the Respondent in 2013 established the Installation Permits Committee hereinafter referred to as "the Committee" or "IPC" to administer the issuance of installation permits and monitor the performance of installation permit holders.
- (c) That the Committee in 2013 received installation permit holders performance reports from distribution licensees for a period of January to December 2012.
- (d) That upon the Committee's analysis of the said reports, there were incidents of complaints of non-compliance with standards of prudent installation practices which posed a safety threat to persons intending to occupy the premises.
- (e) That pursuant to provisions of the Electricity (Installation Permits) Regulations 2003, the Complainant was invited to appear before the Committee to discuss his deficient performance.
- (f) That the Complainant appeared before the Committee on 15th February 2013 and he confessed to misusing his installation permit No.EIP 8553/D issued by the Respondent.
- (g) That pursuant to the provisions of the Regulations, the Committee took a decision to suspend the Complainant's permit for a period of 6 months.
- (h) That upon expiry of the suspension in 2013, the Complainant applied for renewal and was awarded a permit for 2014.
- (i) That the Complainant did not apply for renewal in 2015 but instead applied for 2016.

- (j) That the Committee analyzed Complainant's information regarding the Complainant's performance for the period April 2016 and June 2016 and found incidences of Complainant's non-performance with respect to standards of prudent installation practices and invited him to the Committee to discuss his performance.
- (k) The Committee has not renewed the permit for 2017 because the Complainant has a pending disciplinary hearing in respect to misuse of previous permit but he has refused to attend the hearing despite being summoned on several occasions. The Respondent denied the Complainant's averments that the permit was deliberately delayed or that he did not work due to previous frustration.

In rejoinder the Complainant stated that he was going to adduce evidence that a one Sande Dickens is working with a certain employee of the Respondent to frustrate his employment right.

The Complainant admitted to having been invited for a hearing but contends that was after a decision to suspend him was already taken. He denied that he made installations with intention to cause safety threats. He also denied that there were complaints from clients.

The parties on 30th August 2017 filed a scheduling memorandum. In the said memo each party stated its facts but the following facts were agreed upon.

1. The Complainant was a holder of Class D Permit No. ERA/EIP/CLD 015/1310
2. The Complainant applied to the Respondent for renewal of the said permit on 6th January 2017 where he presented the previous permit for the year 2016 and paid the requisite fees.

3. The Complainant attended a disciplinary hearing before the IPC on 28th February 2017 to discuss his performance for the year 2016.
4. The Complainant has not been issued with an installations permit for 2017
5. The Complainant's installation permit was suspended for 6 months in 2013 which he served and completed.

Issues:

The following issues were agreed upon for determination by the tribunal;

1. Whether the Complainant's right to practice his profession was infringed upon by the Respondent.
2. Whether the Complainant's right to a fair hearing was infringed upon by the Respondent.
3. Whether the Complainant violated the terms and conditions of Class D Permit No.ERA/EIP/CLD 015/1310 issued to him.
4. Whether the Complainant is entitled to the remedies prayed for.

The parties thereafter agreed to proceed by way of witness statements.

In his witness statement the Complainant Mr. Watuwa Jimmy J. Cosmas designated by the tribunal as **CWI** stated interalia that:

He was a professionally trained, qualified, registered and experienced electrical installations person, having passed interviews and vigorous tests of the Respondent. His permit ERA/EIP/CLD 015/1310 was attached as **CEX1**. He stated that he derived income from his work. That he has been deprived of his right by the Respondent thereby damaging his livelihood security. That he made payments for renewal of licence to the Respondent and was not aware of any other requirements from him before getting his licence.

That before he came to the tribunal he had rotated to the Respondent's offices forth and back for two months and seven times to follow up his licence in vain and without explanation as to why the same was not granted.

That he wrote to the Respondent's CEO but without response. The letter was admitted as Exhibit **CEX4**.

That his lawyers have also made attempts to reach the CEO in vain. The lawyers' letter of 03rd February 2017 was admitted in evidence as exhibit **CEX5**. The Complainant avers that in the last 5 years (equivalent of 60 months) he was only allowed to practice for 16 months. He contends that the refusals and delays of his permit were unjustified.

He stated that his report **CEX6** and **CEX7** were ignored by the Respondent.

He claims he was never given adequate time to prepare for the hearing before the Committee.

In para 16 of his witness statement he stated that he was requested to give certificates for the month of June 2016 but had not moved with them as it was never the practice of the Respondent to request for previous certificates.

He further stated that he has never received a Complaint from any of his clients and that the Respondent relied on a false report from M/s Umeme Uganda Ltd.

That till the time he made this witness statement he did not know how the Respondent expected that he was aware so that he should have taken his old permit.

He further stated that the Respondent had no evidence that he misused the permit.

That his issues were not very grave to deserve serious punishment.

During cross-examination by the Respondent's Counsel, the witness stated that he was not familiar with the Electricity (Installations Permit) Regulations 2003-SI 19/2003

After being shown the Regulations especially Regulation 14, the witness said he understood them.

On paragraph 14 of his statement, the witness admitted that he attended a disciplinary hearing. He also admitted that he had attended another one in 2014 around February which also related to installation where the Regulator had received information that he had done installations some of which had some deficiencies i.e. "lacking something." Asked whether he understood the meaning of deficiency, he said he understood deficiency as lacking e.g. wrong materials, omitting certain things that are supposed to be done.

He said that for this particular Complainant in February 2017, he did not understand the complaint but admitted he was served with a paper by the Respondent which indicated that 3 of his installments had problems i.e two had no switches and one had no wiring and that the information was from the licensee, Umeme Ltd.

In the 2017 disciplinary Committee, he was asked for completion certificates but he did not provide them although he was willing to provide them to the tribunal (he did not).

That since 28th February 2017 when he appeared before the Committee, there was no other hearing. He said in all he attended three (3) disciplinary hearings.

Examined on CEX7, the letter inviting him to attend the Installation Permit Committee Meeting, he said he was required to bring

- (a) All completed installation certificates
- (b) Copies of completed installation certificates
- (c) New booklets

He said he was called on phone but was not told what to bring. He said he did not provide the documents.

On information in schedule 8, the witness said he has never seen the information. He admitted that if he had provided this information, it would have provided clarification on whether or not he was the one who did the installation referred to in **CEX7**

He said that since February 2017 he had been to ERA five times but had not provided the documents.

In re-examination the witness again stated that he was not given reason why he was denied a licence.

The witness stated that for renewal;

- (i) you surrender the original permit of the previous year
- (ii) pay annual fees
- (iii) That he received the letter of 28th February 2017 when he had filed this complaint in the tribunal.

On para 16 of the schedule, the witness said he was not aware of the certificates

Finally the Complainant stated that he had suffered damage as a consequence of the Respondent's act. He prayed for the following remedies;

- (i) Ugx.35,075,185 as special damages.
- (ii) Ugx.3,000,000 being minimum earnings for all the months he was denied income.
- (iii) Issuance of permit for 2018
- (iv) General damages of at least ugx.100,000,000
- (v) Any other relief

The Respondent produced Eng. Joseph Bwambale, Principle Compliance Engineer of the Respondent as its sole witness who was designated **RW1**.

The witness possesses a diploma in Electrical & Electronic Engineering from Uganda Technical College, Bushenyi, Diploma in Mechanical Engineering from Busitema University, and a Bachelor of Telecom Engineering from Kyambogo University. He is also registered with the Institute of Electricity and Electronic Engineers of Uganda.

He has worked for the Respondent company in various capacities since 2008. Among his schedules is the coordination of the installation permits Committee of the Respondent. He confirmed that he knew the Complainant and was also familiar with the case in the tribunal.

He told the tribunal that the case against the Respondent dates back in 2016 when the Complainant had issues with incomplete works and that the complaints originated from Umeme Ltd. He acknowledged that the Complainant has not been issued with the work permit for 2017, because of complaints brought against him by Umeme Ltd involving a case in Banda where he allegedly wired premises but there were no wires at customer's premises. A similar complaint originated from Entebbe. The third complaint arose in Mukono where his work was found incomplete.

He testified that following these complaints, an invitation dated 15th September 2016 was extended to the Complainant to appear before the disciplinary Committee on 10th October 2016. He said the Complainant appeared on 28th February 2018.

He told the tribunal that when a wireman provides a certificate without wiring, it is dangerous as it compromises the safety of customers. He said that the Complainant had previous accusation of a similar nature and that based on historical analysis, the Complainant is grossly incompetent to carry out electrical installation. He said the disciplinary action against the Complainant was based on complaints from Umeme Ltd and the Complainant was given an opportunity to be heard but failed to provide papers to rebut Umeme's accusation.

That being the evidence from both parties, the tribunal proceeds to resolve the issues framed.

Issue No.1

Whether the Complainant's right to a fair hearing was infringed upon by the Respondent:

In his submission, Counsel for the Complainant contended that the Complainant was not accorded his right to a fair hearing in terms of Art.28 (1) of the Constitution of Uganda 1995 and that the failure amounted to a

violation of Art. 40 (2) of the Constitution namely the right of the Complainant to practice his profession.

For avoidance of doubt Art.28(1) states:

“In the determination of civil rights and obligation or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.”

The argument by Counsel for the Complainant is that the Complainant received the letter of invitation on 28th February 2016 just hours before the hearing. In his view, although without elaboration, this amounted to denial of fair hearing by the Respondent contrary to Art. 28(1) & 42 of the Constitution.

For his part, the Respondent’s Counsel Mr. Mwandha contended that by writing and inviting the Complainant to the Committee; it, the Respondent had availed the Complainant an opportunity to defend himself and therefore it could not be argued by him, the Complainant, that his right to a fair hearing had been violated.

Counsel cited several cases to support his case.

The right to a fair hearing is embodied in both Art. 28 (1) and 42 of the Constitution. Under Art.42 it stated that ***“any person appearing before an administrative official or body has a right to be treated justly and fairly and shall have a right to apply to court in respect of administrative decision taken against him or her.”***

It is clear from the above provision of the Constitution that the right to a fair hearing includes a right to a speedy trial.

In the case of ISADRU Vs. AROMA & Others CA No.0033 of 2014 Hon. Justice Stephen Mubiru while discussing a right to a fair trial stated that ***“the right to a fair trial in civil matters is guaranteed by article 28(1) of the constitution of the Republic of Uganda, 1995. In the determination of civil rights and obligations, a person is entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. Entailed in that right to a speedy hearing is a trial within***

reasonable time, often termed as a right to be tried without undue delay or the right to a speedy trial. For the realization of this right, all parties... have a responsibility to ensure that proceedings are carried out expeditiously in a manner consistent with this article. The overriding objective under article 28(1) of the Constitution of the Republic of Uganda and the Civil Procedure Rules in general is that courts should deal with cases justly, in a way which is proportionate to the...interests and rights involved...The complexity of the issues and the financial position of each party.”

The same judge in the case of ARIHO Vs. The Governing Council of Uganda College of Commerce, Pakwach in Misc. Civil Cause No.0009 of 2016; held that... *“the rules of natural justice are presumed to apply to bodies entrusted with judicial or quasi-judicial functions only. Although no such presumption arises with respect to bodies charged with performing administrative functions, in a purely policy oriented traditionally administrative sphere of decision making, however, when arriving at decisions with potentially serious adverse effects on someone’s rights, interest or status in exercise of a purely administrative power, an administrative authority has a duty to act fairly, which is a less onerous duty than that of observing the rules of natural justice demanded of such bodies when they act in quasi-judicial capacity, such as when they undertake disciplinary proceedings. The duty to act fairly is specifically applicable to decisions that are likely to have serious adverse effects on someone’s rights, interests or status...”*

“...This was a decision which not only placed the applicants right to continue in his profession or employment at stake but also had potential of grave and permanent consequences upon his professional career. For that reason, it is an administrative decision that placed upon the Respondent a duty to act fairly by observing a high standard of participatory rights guaranteed by the audi alteram partem rule and due process.

That the purpose of the participatory rights in a situation like this is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision maker."

To resolve whether or not the Complainant's right to fair trial was violated, It is important to discuss the sequence of events as well as the evidence of the parties to establish whether the above principles were observed.

The Complainant applied for the 2017 licence on 6th January 2017. He also paid for the application. A copy of the receipt was admitted in evidence as CEX2

In his evidence, the Complainant stated that under ordinary circumstances, the application took three days. The Complainant said that after a period of waiting, he wrote a letter to the Chief Executive Officer (CEO) of the Respondent on 31st June 2017. In the same letter he stated "*his licence had delayed without any satisfactory explanation.*"

He concluded his letter "*if I have committed any crime, let it be reported to courts where I will ably defend myself but not to continue this kind of suffering unnecessary punishment of torture and deliberate denial of my right to exercise my profession.*"

Although this letter was acknowledged by the Respondent on 31st January 2017, there is no evidence on record that the same was ever answered by the Respondent.

On 3rd February 2017, the Complainant's lawyers Mungoma, Mabonga, Wakhakha & Co. Advocates, wrote to the Installations Permit Committee, requesting the Committee to issue a licence to their client and threatened to take legal action if no response was received in 14 days. Again there appears to have been no response to this letter. The results was that indeed on 24th February 2017, the Complainant filed this complaint in the tribunal.

If the Respondent had indeed way back on 15th September 2016, written to the Complainant, even before the Complainant applied for a 2017 permit, to appear before the Committee on 10th October 2016. Why did the Respondent then not respond to the Complainant's letter and that of his lawyers that there is a pending complaint whose date of hearing was 10th October 2016 (now passed).

The Complainant says he did not see the letter of invitation till 28th February 2018 when he was called on phone to appear before the Committee. Indeed the letter CEX7 was acknowledged by him on that day. The Respondent did not rebut this evidence of date.

Eng. Semakula RWI, the only witness of the Respondent, was not helpful to the tribunal as he said he was not sure whether and when the said letter was dispatched.

The tribunal is inclined to believe the Complainant's version that indeed he did not see the Respondent's letter till 28th February 2018 while he was at the Respondent's offices and when the matter was already before the tribunal. No wonder therefore the Complainant did not produce the documents on that day as required because he did not have prior knowledge that the same were required.

It is clear from the above that the Complainant was not properly informed of the accusations against him. He was not given adequate opportunity to prepare his defence and later defend himself. The period from 15th September 2016 when the invitation was purportedly made to 28th February 2018 when he physically interacted with the Committee amounted to unreasonableness in terms of the time span between when the invitation to the hearing was made and when it actually took place.

Under the Electricity Act 1999, Sec.11 - The Respondent is empowered to

- (i) Develop and enforce performance standards for generation, transmission and distribution of electricity

- (ii) Encourage and develop uniform electricity industry and codes of conduct.

The preamble to the Act provides;

“to provide for licensing and control of activities in the electricity sector.”

It is important to note that the electricity sector is a crucial sector in the economy which is highly regulated. The above provisions give the Respondent wide powers to superintend licensing function in the sector.

The above provisions are strengthened by the provisions in the Electricity (Installation Permits Regulation, 2003) which provide under regulation 5 as follows:-

“A person shall not practice as an installation person unless he or she is in possession of a valid permit issued in that behalf by the Committee (Installations Permit Committee).”

It must have been envisaged that the Committee must exercise these regulations, fairly, diligently and quickly to enable the user’s secure their permits and execute their respective tasks under the regulations.

Upon the evidence given, the tribunal is not satisfied that the Committee exercised its powers fairly in processing the Complainant’s permit, and forms the opinion that the Complainant was not afforded a speedy hearing which is a vital component of the right to a fair hearing within the law. The first issue is therefore resolved in favour of the Complainant.

Issue No. 2

Whether the Complainant’s Right to Practice his Profession was infringed upon by the Respondent:

In his submission, Counsel for the Complainant contended that the evidence showed that the Complainant did not receive from the

Respondent a fair hearing and that the same amounted to infringement by the Respondent on the Complainant's right to practice his profession under Art. 40(2) of the Constitution. Counsel complained that by informing the Complainant when he interacted with the Committee that the Respondent received information that the installation done by the Complainant posed danger to the public, demonstrated that the Committee had formed an opinion on the case even before it heard the Complainant's version and this amounted to infringement on Complainant's right to practice his profession.

For his part Counsel Stephen Mwandha contended for the Respondent that the Complainant's right to practice his profession is not absolute but rather subject to terms, conditions, obligations and responsibilities as imbedded in the Electricity (Installation Permits) Regulation 2003 which established the Installation and Permits Committee (IPC). He cited regulation 5(i), 11(f) and 14.

Regulation 5(i) provides

"A person shall not practice as an installations person unless he or she is in possession of a valid permit issued in that behalf by the Committee."

Regulation 11(f) provides

"that in the case of renewal of licence, the standard of work and conduct of business have been satisfactory during the period of validity of the previous permit."

Regulation 14 provides instances of cancellation.

(1) The Committee may at any time refuse to grant or renew a permit or cancel a permit if it is satisfied that the person has failed to comply with any conditions contained in these regulations

(2) In case of refusal to grant a permit or cancellation of permit, the Committee shall call upon the applicant or licensee concerned in writing; to appear in person or by representation, before the Committee and show cause why the Committee should not exercise its powers under regulation(1) of these regulation.

Counsel Mwandha submitted that the Complainant was requested to submit his notification booklets for the Committee to ascertain his performance for 2016 but refused and instead went to the tribunal.

Counsel further submitted that the failed works by the Complainant as alleged in the reports from Umeme Ltd, (See exhibits RE2,3,4,5,&6) put the lives of the consumers to risk, the reason the Complainant was not issued a licence before clearing allegations made against him in his installation work of 2016. He submitted that the Respondent did not infringe on Complainant's right.

Osborn's Concise Dictionary defines "right" "*as an interest recognized and protected by the law; respect for which is a duty, and disregard of which is a wrong*"

"A right involves,

- (i) A person invested with the right, or entitled;
- (ii) A person or persons who that right imposes a correspondent duty or obligation;
- (iii) An act or forbearance which the subject matter of the right;
- (iv) An object, that is, a person or thing to which the right has reference, and
- (v) A title or reason for the right becoming vested in the owner."

From the above definition, there is no doubt that the Complainant who was a qualified technician had a right to practice his profession. It is also true from the same definition that a right includes "a person whom that right imposes a corresponding duty or obligation."

In our view the corresponding duty or obligation is what is contained in regulation 5(i) (11) (f) and 14 above cited namely the duty on the Complainant to satisfy the Committee on his conduct of business and standard of works. In short, the duty to satisfy the Committee that he is a fit, proper person for grant of licence.

We agree with Counsel Mwandha, that the Complainant's right is not absolute but is subject to obligations and responsibilities as imposed by the above regulations.

According to the Complainant's own evidence, he was served with a letter dated 15th September 2016. He was advised on what to present to the Installation Permit's Committee.

The letter concluded;

"The decision of the Committee upon meeting you will be made public and accordingly you are advised to provide accurate information to the Committee to enable it make a fair assessment and decision concerning your performance for the subject matter."

Although the Complainant got this letter late, there is no indication that he provided to the Respondent the crucial documents that were necessary for the Respondent to take a decision whether or not to issue him an installations licence.

During cross-examination of the Complainant by the Respondent's Counsel, he not only admitted that he had not provided the documents but also admitted that he was requested to provide information on previous conduct but did not although the information would have provided clarification as to whether he was the one who made the installation referred to in exhibit "REJ."

He further said he had been to the Respondent's office five (5) times since 20th February 2018 but did not provide the documents.

During the trial, the Complainant had ample opportunity to avail documents but he refused, ignored or failed to provide such documents. They were not even part of his evidence to the tribunal.

By consent of the parties, the Respondent provided to the tribunal, documents admitted as RE1, RE2 RE3 & RE4.

The summary of the documents shows that the Complainant did questionable installations as follows:-

1. Kasande Joan at Banda – No wiring
2. Mugasha Mark at Mukono – No wiring
3. Nakyanzi Dorothy at Entebbe – Main switch not installed; incomplete.

The Complainant did not cross examine the Respondent's witness on the accuracy of this information and neither give any evidence in rebuttal.

The tribunal is of the view that since these were documents and records that were to affect issuance of his licence, the Complainant should have provided to the tribunal ample evidence in rebuttal to satisfy the tribunal that the said documents did not refer to work done by him. He chose to let the documents pass unchallenged.

Our conclusion is that the documents referred to work done by him and he had an obligation to explain his role in the alleged work before renewal of his licence.

As pointed out earlier, the electricity sector is a highly regulated sector. Those who seek licences to perform functions in the sector must be ready and willing to abide by the rules and standards set by the Regulator. Not to do so has serious consequences.

The issuance of licences is a mandate of the Respondent through its Installation Committee. The tribunal cannot assume this role.

Since in the first issue we ruled that Complainant did not receive a fair hearing, and equally since the responsibility to grant licences for installations is vested in the Committee and the grant is subject to conditions to be fulfilled by the Complainant, we are unable to rule that the Complainant's right to practice his profession has been violated, the Complainant not having furnished to the Committee the documents it sought, in order to assess him.

We do not agree with Counsel for the Complainant that by telling the Complainant that they had received information that the installation done

by him posed a danger to the public, the Committee had formed an opinion on the case even before it heard the Complainant's version. On the contrary, we agree that under the law and regulation cited above, the Respondent had a regulatory duty to treat every allegation made against the Complainant seriously and request the Complainant to show cause why the Committee should not decline to grant a licence or cancel a licence where one had been granted ; the reason the Complainant was being invited to appear before the Installations Committee with his documents to assist the Committee to decide on the merits of the Complaints received before granting a fresh installation permit to the Complainant.

It is our direction that the Complainant be given time to appear before the Committee with the relevant documents. The Committee shall hear the case and give its decision in the matter. The hearing and decision making must be made within 15 working days from the date of this order.

Issue No. 3

Whether the Complainant violated terms and conditions of Class D Permit No.ERA/EIP/CLD 015/1310 issued to him:

The argument of the Complainant's Counsel is that there was no proof from the Respondent that the Respondent had violated the terms and condition of his licence. Counsel argued that since the completed installation forms were to be from the Complainant and the Complainant had not forwarded to the Respondent the forms for the customers alleged in exhibits RE1 – 4, then there was no proof that the Complainant had done the faulted installation as alleged.

With due respect we are unable to appreciate learned Counsel's arguments, which we find to be almost self-defeating in the context of this case.

Exhibits REX1-5 were admitted in evidence by consent of the parties. RE3 shows installation work for Kasande Joan in Banda was done by the Complainant. Installation work in RE4 for Mugasha Mark at Mukono is also

shown as done by the Complainant and so was installation work in RE 5 for Nakyanzi Dorothy.

All these installation notification forms bear the name and signature of the Complainant. There was no attempt by the Complainant to deny that the signatures were his. The tribunal has no alternative but to assume that the work was done by the Complainant. Since no evidence was however adduced by the Respondent or the clients, we are unable at this stage to conclude that the work though presumably done by the Complainant was not in compliance with the expected standards as alleged.

We agree with Counsel for the Respondent that in the absence of contrary evidence from the Complainant, the installation Committee is right to assume that the Complainant has violated the terms and conditions of his permit. The tribunal must however, having given its ruling in issue No.1, give the Complainant the benefit of doubt.

Since the tribunal has already directed that the Complainant must be given opportunity to present his case, we direct that this issue be resolved by the Installation Committee after hearing the Complainant and his witnesses if any.

Issue No.4

At the conclusion of his evidence the Complainant made the following prayers:-

- A Special damages - shs.35,075,185
- B Losses for income - shs. 3,000,000
- C General damages - shs.100,000,000
- D issuance of permit for 2018
- E Any other relief.

We shall discuss the prayers one by one:

A. Special damages

The general principal of law is that special damages must be strictly pleaded and proved. Although the Complainant pleaded special damages of shs.35,075,185 no evidence was brought to prove or support this amount. This prayer fails.

B. Loss of Income

There was no evidence that the Complainant earned shs.100,000 per day and shs.3,000,000 per month as alleged.

There was even no evidence that the Respondent caused the loss. This amount remained speculative and the prayer is declined.

C. General damages

The Complainant was denied fair trial. See our ruling in issue No.1

The award of general damages is in the discretion of court (read tribunal) See Uganda Commercial Bank Vs. Kigozi [2002] 1 EA 305.

In the same case it was observed that the object of the award is usually to compensate the Plaintiff (read Complainant) for the loss or injury he has suffered.

In SYLWAN KAKUGU TUMWESIGYE VS. TRANS SAHARA INTERNATIONAL GENERAL TRADING; CC NO.95/2005, Hon. Justice Kiryabwire stated;

“General damages is such as the law presumes to result in the infringement of a legal right. It is the natural and probable consequence of the breach. The plaintiff is required only to assert that such damage has been suffered but need not be strictly questioned.”

We assess the sum of shs.7,000,000/= (Shillings Seven million only) as adequate compensation to the Complainant and accordingly award the same.

D. Issuance of the installation permit for 2018.

We have observed that the mandate to issue installation permit is for the Respondent after a due process.

We order that the Respondent through its organ immediately considers the Complainant's application for the licence for the year 2018. This process must be finalized within 15 working days from the date of this order.

E. Any other reliefs

This does not arise. The tribunal declines to order any reliefs not prayed or proved by the Complainant.

Bearing in mind that this matter is going back to the Committee, and in view, our resolution in issues 2, 3, and 4, it is ordered that each party bears its costs.

We so order.

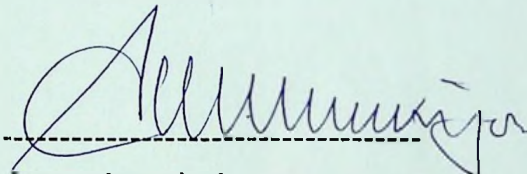
Charles Okoth Owor



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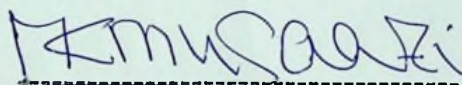
Chairman

Anaclet Turyakira



Vice Chairman

Moses Musaaizi



Member