

THE REPUBLIC OF UGANDA
THE ELECTRICITY ACT CAP. 145
THE ELECTRICITY DISPUTES TRIBUNAL (PROCEDURE) RULES 2012
COMPLAINT NO.006 OF 2022

IN THE MATTER OF

LUBOYERA JAMES **COMPLAINANT**

VERSUS

UMEME LTD **RESPONDENT**

Before :

Charles Okoth Owor Chairman
Anaclet Turyakira Vice Chairman
Christine Muhindo Member

JUDGMENT

The Complainant lodged this complaint against the Respondent for trespass and deprivation of his right to property. The Complainant claims to have sold his land; Kyebando Block 107, Plot 658 at Kawanda measuring app.0.2910 Acres, having purchased the same from one Mayi Nalubega Mubiru to Kikonyogo Cyprian at UGX 200,000,000/= (Two Hundred Million Uganda Shillings).

That the purchaser however after some time, found an electric pole and wires onto the land upon which he terminated the agreement and sought a refund. The Complainant claims to have thereafter sold several plots of his other land to raise the money he had received from Kikonyogo Cyprian and thereafter refunded the same to him.

The Complainant seeks damages equivalent to UGX 400,000,000/= (Four Hundred Million Shillings) a declaration that the Respondent has no claim of right on the land, a permanent injunction to restrain the Respondent from further trespass, an eviction order, general damages for trespass and misrepresentation and costs of the suit.



The Respondent filed a response in which it denied any liability contending that the complaint is baseless, defective, devoid of merit and discloses no cause of action and put the Complainant to strict proof.

The Respondent denied any action of trespass but in the alternative contended that if any poles were erected on the Complainant's land it was with his consent. Lastly it was the Respondent's contention that it carries on its duties lawfully and professionally.

Issues:

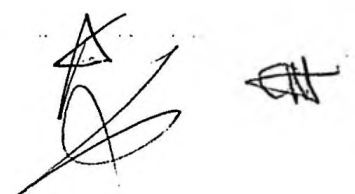
1. Whether the respondents trespassed onto the suit land?

The Complainant testified that he is the registered proprietor of land comprised in Block 107, plot 658 Kyadondo at Nakasanjje having bought the same from Mayi Nalubega. The Complainant later sold the land to Kikonyogo Cyprian a Ugandan based in Texas at UGX 200,000,000= (Two Hundred Million Shillings). The buyer however later on found an electric pole and wires onto the land upon which he terminated the agreement.

The complainant produced a land sale agreement dated 30th November, 2015 between himself and Mayi Nalubega which was admitted in evidence as **CEX1** while a copy of the title was admitted as **CEX2**.

There is no doubt therefore that the Complainant was the owner of the land in question. The Complainant testified that when Mr. Kikonyogo found wires and a pole on his land, he, the Complainant approached the Respondent to remove the wires to no avail. In the course of hearing, the Complainant produced photographs showing poles and wires. The photos were collectively admitted in evidence as **CEX8**.

In the case of **Sheik Mohammed Lubowa Vs. Karitas Enterprise Ltd CA No.4 of 1987**, the East African Court of Appeal stated "***In order to prove alleged trespass, it was incumbent on the appellant to prove that the disputed land belonged to him, that the Respondent had entered upon the land and that the entry was unlawful in that the Respondent had no claim or interest in the land.***"

Handwritten signature and initials in black ink, located at the bottom right of the page.

In the case of Civil Appeal No. 11 of 2002: Justine E. M. N Lutaaya versus Stirling Civil Eng., while defining trespass, it was held by the Supreme Court that *"trespass to land occurs when a person makes an unauthorized entry upon another's land and thereby interfering with another person's lawful possession of the land."*

The Complainant gave evidence that the Respondent entered onto his land without his knowledge and consent.

The Respondent and its agents having failed to appear for the hearing, the evidence of the Complainant was left uncontroverted. The Respondent did not show whether the necessary consents were sought before it erected an electric pole and wires onto the complainants land. It is our finding that the respondent trespassed onto the complainants land. Issue No. 1 is therefore answered in the positive.

What remedies are available to the parties?

The Complainant testified that having bought the land, he later sold the same to Kikonyogo Cyprian a Ugandan based in Texas at UGX 200,000,000= (Uganda Shillings Two Hundred Millions). The buyer however found an electric pole and wires onto the land upon which he terminated the agreement and demanded a refund of the purchase price and 10% interest as was agreed in the sale agreement. A copy of the letter of termination dated 20th November, 2019 was admitted in evidence in **CEX3**. The Complainant testified that the buyer (Kikonyogo Cyprian) nominated a one Kyagaba Tonny Fred as his agent through whom the refund was to be made. A copy of the letter appointing the said Kyagaba and his National ID were adduced in evidence and admitted as **CEX10** and **CEX11**.

The Complainant further testified that upon receiving a letter of termination from Kikonyogo his lawyers M/s Sengoba & Co. Advocates wrote a letter to the Managing Director of the Respondent seeking the removal of the offensive wires and to pay damages for trespass and legal fees. The letter dated 21st November, 2019 was admitted in evidence as **CEX4**. The Complainant did not receive a response to the letter which compelled him to



file a suit in the High Court vide C.S.128 of 2020 which was later transferred to the tribunal hence this Complaint.

In his evidence the Complainant testified that while at the High Court attempts were made to amicably resolve this matter without success. The Complaint avers that the acts of the Respondent amount to deprivation of his fundamental constitutional right to property. He avers that as a result, he has been put into a precarious situation and continue to suffer lots of damages and costs.

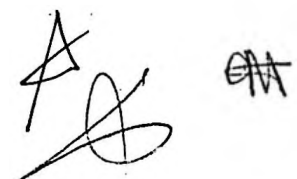
The Complainant further testified that in order to raise the purchase price that was paid by Kikonyogo Cyprian with interest as refund, he had to sell several other pieces of land i.e. plot 1415 at Kito Gayaza Road to Reverend Fr. Noah Sserunjoji at UGX 55,000,000=, plot 1414, Block 190 at Kitoke to Gad Naturinda at UGX 48,000,000=, plot 1413 and 1416 on Block 90 to Reuben Masereka, Robert Kiwanuka and Barnabas Ntakirutimaana at UGX 100,000,000=.

The Complainant testified that all the proceeds from the sale of the above plots were handed over to Kyagaba Tonny Fred a nominated agent for Kikonyogo Cyprian as refund for the sale of the impugned plot.

A further scrutiny of the letter appointing the said Kyagaba an agent of the said buyer Kikonyogo states, **"This is to kindly introduce to you the above named person whom I have authorized to receive all my money from you. He must sign at all times for the money received from you."**

The said agent was therefore required to sign for any sums received as part of the refund. No evidence however was introduced to show that the said agent ever received monies as a refund on behalf of Cyprian Kikonyogo.

A further scrutiny of the case file reveals Annexure I to the complaint, a memorandum of understanding between the Kikonyogo Cyprian and Luboyera James in which it was agreed that the money Cyprian had paid to the Complainant for the purchase of Plot 658 Block 107 Kyadondo shall be refunded. In the same MOU, the Complainant agreed to give to the said (buyer) Cyprian 4 plots namely 1424, 1425, 1426 and 1427 on block 190 at Kito Kyadondo. These plots were valued at UGX 200, 000,000=. It was also

Handwritten signature and initials in the bottom right corner of the page.

The Complainant testified that the Respondent having trespassed and erected an electric pole and wires on his land, he has tried several times but failed to clear the land and, he cannot build onto the same because of overhead wires. This testimony was uncontroverted.

In **Charles Acire Vs. Nyaane Engola HCCS No.143 of 1993**; it was held that; *"plaintiff who suffers damage due to the wrongful acts of the defendant must be put in the same position he or she would have been in if he or she had not suffered the wrong."* The Complainant is therefore entitled to general damages.

I

The Respondent made prayers for :

- (i) Damages of Ug.shs.400,000,000/=

We find no basis for this claim.

The Complainant is instead awarded UGX.30,000,000(Uganda Shillings Thirty Millions) only as general damages with interest at 8% per annum from date of judgment till payment in full.

- (ii) Declaration that the Respondent has no claim over his land.

The Complainant produced a title for the land. See CEX 1. No evidence has been adduced by the Respondent to show it owns the land.

It is therefore our finding that the Respondent has no claim over the Complainant's land.

- (iii) Permanent Injunction:

A permanent Injunction is issued against the Respondent to restrain the Respondent, his agents, servants and workers from further acts of trespass and forcible entry.

- (iv) Eviction:

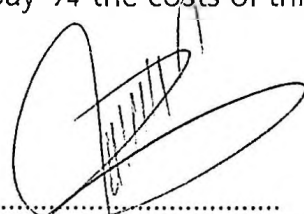
The Respondent is directed to remove its pole and wires from the Complainant's land.

The Complainant complained that he is unable to use the land because of the poles and wires. He also claims that he can't build under the wires though he did not know the capacity of the wires above his land.

Subject to our orders in (iv) above, unless the Respondent removes the impugned wires, then it is our order that the Respondent compensates the Complainant for the land for an amount to be established by the Chief Government Valuer. The Respondent shall pay $\frac{3}{4}$ the costs of this complaint.

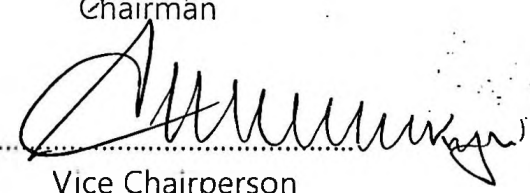
We so order.

Charles Okoth-Owor



.....
Chairman

Anaclet Turyakira



.....
Vice Chairperson

Christine Muhindo



.....
Member

Dated at Kampala this 20th of DECEMBER, 2023.