

**THE REPUBLIC OF UGANDA**  
**THE ELECTRICITY DISPUTES TRIBUNAL**  
**MISCELLANEOUS APPLICATIN NO 4 OF 2018**  
**(Arising from EDT 36/2017)**

**RWANSIBO DAVID.....APPLICANT/COMPLAINANT**

**VERSUS**

**UGANDA ELECTRICTY .....RESPONDENT**  
**TRANSMISSION COMPANY LIMITED.**

**Before**

Charles Okoth-Owor- Chairman  
Annalet Turyakira - Vice Chairman  
Harriet Wanyoto - Member

**Present**

Phiona Nakayenze- Tribunal Clerk

**RULING**

This Application was brought by way of Chamber Summons pursuant to the Electricity Disputes Tribunal (Procedure) Rules of 2012, Order 6 rr19, 23 and 31 of the Civil Procedure Rules and Order 41 rule 1 of the same Civil Procedure Rules S.1 71-1 on 14/08 2018.

The Applicant who is also the Complainant sought orders that: -

- (a) He be granted leave to amend the pleadings filed before the tribunal.
- (b) That he be granted leave to amend his Complaint to claim that the only customary land affected by the project of the Respondent is situated at Lyanda and also to reduce his claim from **UGX 500,000,000/=** to **UGX 50,000,000=**
- (c) That costs of this Application be in the cause.

The Complaint sought to be amended was that filed on 22 December 2017 and served on the Respondent on 23/01/2018, Respondent responded on 05 February 2018. The Application was supported by the affidavit of Rwansibo David, the Applicant/ Complainant.

Applicant deponed among others that; at the time of filing the Complaint, he indicated in his Complaint that he owned two pieces of land, one at Katerera Trading Centre and another at Lyanda being affected by the project of the Respondent. He further deponed that, as the project progressed, the Respondent fully compensated for the land at Katerera Trading centre where a house was constructed for him while no compensation was made for the land at Lyanda where an electric tower was erected and was thus reducing his claim to UGX 50,000,000/=. He thus desired to amend his claim to prove to Court that his claim is for one piece of land situated at Lyanda which reduces the amount of the claim stated earlier in the Complaint. He also deponed that the amendment if granted would not alter the cause of action and not occasion any injustice to the Respondent. It would also enable the tribunal to determine the Complaint in respect of the land affected by the Respondent's activities at Lyanda. Finally, he deponed that it would be in the interest of justice if leave to amend the Complaint was granted.

The Respondent on its part replied through an affidavit deponed by Edward Rwabushenyi; a Senior Legal Officer of the Respondent who stated that he was very well conversant with matters of this dispute. He stated in paragraph 3 of his affidavit that paragraphs 2 and 3 of the Applicant's affidavit were true. Paragraph 3 of the Applicant's affidavit is particularly interesting in that it states that "*That at the time of filing the Complaint I indicated in my Complaint that I own two pieces of land one at Katerera Trading centre and another at Lyanda being affected by the project of the Respondent*" (italics are of the tribunal).

The Senior Legal officer of the Respondent further stated that the Applicant/ Complainant was identified by the Respondent as one of the many persons living in Katerera village, part of whose land together with the developments would be affected by the projects (see paragraph 5 of the affidavit).

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He further deponed that on 13<sup>th</sup> April 2013, the Respondent promptly and fully compensated the Applicant/Complainant and that the said Applicant accepted the compensation and acknowledged receipt thereof and upon request voluntarily handed over the acquired part of the land to the Respondent. He attached thereto as “A” a photocopy of a Notice to vacate the land acquired for the project. The Notice attached read as follows; “As you may be aware, the compensation for your property was effected on 13/04/2013”; and requested him to vacate the land within 6 months. The compensation comprised a cash settlement of UGX 313,809= and a re-settlement house (paragraphs 6,7, &8).

Mr. Rwabushenyi averred in his affidavit that paragraph 4 of the Applicant’s affidavit was false in that the Applicant deponed that he was compensated after/ and or during the progression of the Complaint, whereas the Applicant was compensated on 13<sup>th</sup> April 2013 and not 2018, and that inspite of having been compensated, the Applicant had filed a baseless claim with respect to the land at Katerera village. He further deponed that the proposed amendment is in fact a withdrawal of the claim with respect to the land at Katerera village. He further deponed that the Respondent would be prejudiced if the Application is granted, as it had incurred costs in defending the Complainant<sup>nt</sup>; and that the interests of justice would not be served. He therefore opposed the Applicant’s Application to amend the Complaint and prayed for its dismissal with costs. He also prayed for judgement on admission and dismissal of the claim with respect to the land at Katerera village.

He attached thereto “B” a photocopy of a letter dated 07/12/2017 (I suppose 2018) from the Applicant’s lawyers Guma & Co. Advocates to A.F. Mpanga Advocates, the Respondent’s lawyers wherein Guma & Co. Advocates stated that “we *have established that the Complainant has two pieces of land and your client compensated one piece of land at Katerera T/C, and left another piece of land at Lyanda uncompensated.*

Counsel Guma submitting in favour of the Application stated that going by the principles of amendments; as stated in the case of **GASO TRANSPORT SERVICES V OBENE** 1990-94- HCB; amendments should not cause to the other party injustice and should avoid a multiplicity of actions. In his views the proposed amendments to the Complaint would not prejudice the Respondent, because it only sought to substitute the averment that land at Lyanda was not compensated and not at Ruganda and to reduce the claim from **UGX 500m to UGX 50m.** =This would enable the tribunal to try the Complaint on merit and resolve the real issues.

On the part of Counsel Apollo Katumba, for the Respondent, he opposed the Application to amend and adopted the grounds of opposition in the Affidavit of Edward Rwabushenyi a Senior Legal Officer of the Respondent. Some of the grounds have been stated hereinbefore.

He argued that grounds for permitting amendments are well stated in cases, and particularly; **Misc. Application No. 254 of 2011** between **BRIGHT CHICKS UGANDA LTD vs DAN BAHINGIRE**. He claimed that; reduction of amounts claimed was declined as a ground for amending and that amendment would not be allowed if it introduces a new cause of action, which in his opinion this particular amendment sought to do. To support his submission, he drew the attention of the tribunal to the fact that paragraph 3 and repeated in paragraph 4(a) of the Complaint stated that the subject matter of the Complaint are lands in Katerera Trading center and Ruganda village.

On the other hand, the proposed amendments as stated in paragraphs 3,4,5 and 9 thereof, the land which is the subject matter of the Complaint is located at Lyanda. He argued that Ruganda and Lyanda, being two separate pieces of land meant that they were two separate causes of action. He further submitted that the proposed amendment is not intended to only drop the claim in respect of land at Katerera trading Center but is actually intended to drop the original claim in the Complaint in respect of land at Katerera trading center and Ruganda village and



introduce a new cause of action for lands located at Lyanda. He claimed that if the amendment was permitted, the Respondent would be prejudiced as its entire defence would be defeated by this amendment; The defence of the Respondent being that the Complainant was compensated fully in kind and in monetary terms for the land that is in the original Complaint. He further submitted that the Complainant frivolously filed a claim in respect of land at Katerera Trading Center, for which he had already been compensated leading their clients to incur heavy costs to defend a claim for UGX 500,000,000/= yet the proposed amendment only serves to introduce a totally new claim. He believed that the proposed amendment is *malafide* and will cause further delays; the Complaint having been filed way back in 2017, and will re-open pleadings as the amendments in his opinion clearly introduces a new cause of action. Counsel Guma in reply submitted that both the original Complaint and the amendment seek Compensation and that the reference to Ruganda village in paragraphs 3 and 4(a) of his Complaint were only typographical errors and the land actually meant was land at Lyanda and not Ruganda, but Counsel Katumba, insisted that it was not a typographical error as the name of Ruganda was repeated in the said Complaint.

We have observed and it is very well stated by now Justice of High court Musa Ssekana in his text book on “**Civil procedure and Practice in Uganda**” that “*the wide and extensive powers of amendment vested in Courts (read tribunal) are designated to prevent the failure of justice due to procedural errors, mistakes defects and serve the aims of justice.*”

*The powers of amendment are intended to make more effective the function of the Courts to determine the true substantive merits of the case.....and thus to free the parties and Court from the technicalities of procedure and to correct errors and defects in the proceedings. Substantive justice shall be administered without undue regard to technical practice;”* a reference to Article 126 (2) (e) of the 1995 Constitution of Uganda, and that; “*The Court may at any time, and on such terms*



*as to costs or otherwise as it may think fit, amend any defect, or error in any proceeding in a suit, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding” and he referred to **Section 100 Civil Procedure Act.***

We have carefully considered the affidavits sworn by the Complainant and that of the Respondent’s senior Legal officer in support and opposition respectively to the amendments sought to be made by the Applicant/ Complainant.

We have also considered the Court record of the proceedings to date. We agree with Justice Musa Sekaana that a proposed amendment should not work injustice to the other side, in that an injury that can be compensated by way of costs is not an injustice. We also agree that a multiplicity of proceedings should be avoided as far as possible and all amendments, which avoid such multiplicity should be allowed and that an application which is made malafide should not be granted.

We are also conscious of the caution stated in the text book referred to earlier; (paragraphs 7.12.6 on page 150) to the effect that; *Court should be more inclined to allow the amendment of the defects in a pleading rather than give judgment in ignorance of facts which ought to be known before rights are definitely decided.*

A review at this point leads us to believe that much as the names **Ruganda** appeared in paragraphs of 3 and 4(a) of the Complaint filed on 22/December 2017; this may however have been an error on the part of the Complainant and or his Counsel, and no injustice which cannot be compensated by way of costs has been shown to exist. We also observe that the Complainant in paragraphs 3 and 4(a) states that one piece of land measuring approximately **1<sup>1</sup>/<sub>2</sub> acres**, is located at Katerera Trading Center while another of approximately **3 <sup>1</sup>/<sub>4</sub> acres** is situated at Ruganda village, all in Kagadi District.



The proposed amendment, paragraph 4 and 5(a) thereof states that the Complainant's land is at Lyanda measuring approximately **3 ½ acres**.

The Complainant avers in paragraph 4(b) of the Complaint that "since 2017, the Respondent unlawfully trespassed on the Complainant's land by constructing a road and are digging the land to install metallic electricity poles without any form of compensation". The same averment is repeated in paragraph 5(b) of the proposed amendment.

The Respondent on its part in its response to the Complaint states that it duly ascertained **0.148 acres** of land as the total acreage of the Complainant's land to be affected by the project and had the same assessed and valued and compensated the Complainant for the **0.148 acres** both in monetary terms and resettlement into a new house for the land acquired with its developments. We note that in paragraph 5 of his affidavit, the Respondent's Senior Legal Officer deponed that, "the Respondent identified the Applicant/....as one of the many people living in *Katerera village*..... part of whose land together with the developments therein would be affected by the project" and that the Respondent ascertained 0.148 acres as the total acreage of the Applicant's land to be affected by the project and that the Respondent promptly and fully compensated the Applicant which he duly accepted and acknowledged receipt thereof. (see paragraph 6,7, and 8 of the Respondent's affidavit).

We believe that the compensation is in respect of 0.148 acres in Katerera as the above mentioned paragraph seem to surmise, and to limit the area identified to Katerera and to the above quoted acreage.

We don't believe that substitution of the name of Ruganda, claimed by the Complainant to have been stated in error for Lyanda, would greatly prejudice the current defence or response of the Respondent, who in any case we feel are at liberty to also amend their response accordingly.




The issue now is in respect of 3 ½ acres which is not located at Katerera village. The second piece of land in both the Complaint and the proposed amendment are about 3 ½ acres and the particulars of the Complaint are the same in that both claim that since 2017 the Respondent has been constructing a road and erecting electricity tower and or poles in the Complainant's land, without compensation, an action that is alleged will deprive the Complainant of any gainful use of his land.

We are convinced that the proposed amendment does not involve a complete change in the nature of the action and neither does it set up an entirely different claim from that which the Respondent came to meet and neither does the amendment change the subject matter of the suit but only the name of the location which could have originally been stated erroneously in the Complaint.

We are further led to believe that the location was meant to read "Lyanda" and not Ruganda because from early in the proceedings, the Complainant's Counsel constantly referred to Lyanda as the second piece of land that was affected but not compensated and never at any one time mentioned Ruganda.

Indeed, in the proceedings of 7<sup>th</sup> May 2018, Counsel for the Complainant in the presence of Counsel Yusuf Mawanda for the Respondent informed the tribunal that, although the Respondent, had following a mediation meeting on 24/04/2018 between the two parties and their respective Counsel, promised to visit the land in dispute and ascertain the claim brought against it, the Respondent had not yet visited the land in disputes at *Lyanda* village in Kagadi District and that the land at Katerera was fully compensated. Counsel Mawanda responded that the Respondents has officers on the ground waiting for the Complainant to assist the Respondent to verify the facts on the ground. Parties were directed to meet on 10<sup>th</sup> may 2018 to verify the status on the ground, and report to the tribunal.





In the proceedings of the tribunal on 06/06/2018 Counsel for the Complainant in the presence of Counsel Katumba for the Respondent, agreed that land at Katerera was compensated but that the Complainant insists that land at *Lyanda* was not compensated. Counsel Katumba responded that all land that belongs to the Complainant was compensated. The tribunal directed that in order to expedite resolution of the dispute as to whether the land said to be located at Lyanda, Kagadi District was part of the Complainant's land that was affected and whether or not it was compensated if affected. The parties were directed to once more arrange to visit the location and jointly verify the status and report back to the tribunal. The joint survey was to be carried out by 06 June 2018.

We believe that the foregoing was sufficient to put the Respondent on notice that the Complainant is actually referring to land at Lyanda and not Ruganda as is stated in the Complaint, and thus should not be or feel prejudiced by the Complainant seeking an amendment to so formally state that the land is at Lyanda and not in the village named as Ruganda, stated in the Complaint.

We also note that the Respondent's Senior Legal Officer also acknowledges in para.3 of his affidavit that it is true that at the time of filing the Complaint, the Complainant owned one piece of land at Katerera Trading Centre and another at Lyanda, being affected by the project of the Respondent; This is so inspite of the fact that the Complaint stated Ruganda and not Lyanda which we wish to believe was an error on his part.

We also believe that the desired amendment would if granted avoid a multiplicity of proceedings.

- (a) Leave to amend is granted to the Applicant/ Complainant in the terms proposed so as to bring out the real question in controversy between the parties and to avoid the tribunal giving judgement in ignorance of facts which ought to be known before rights are definitely decided.



(b) The Applicant /Complainant will pay costs of this application, having taken rather long to apply for these amendments when it was long apparent of such a necessity. The Complaint was filed on 22<sup>nd</sup> December 2017 while the Application for amendments was filed on 14<sup>th</sup> August 2018 which was also long after Complainant realized and referred to the disputed land as Lyanda, in the proceedings of the tribunal, as here before observed.

We so order.

Dated at Kampala this.....1st.....day of APRIL.....2022.

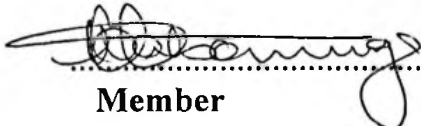
Charles Okoth-Owor

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**Chairman**

 Annaclet Turyakira

  
.....  
**Vice Chairman**

Harriet Wanyoto

  
.....  
**Member**