

THE REPUBLIC OF UGANDA  
IN THE ELECTRICITY DISPUTES TRIBUNAL AT KAMPALA.

EDT COMPLAINT NO.44 OF 2018

KAISABIRA DEO.....COMPLAINANT

VERSUS

UGANDA ELECTRICITY  
TRANSMISSION COMPANY LTD.....RESPONDENT

BEFORE

CHARLES OKOTH-OWOR.....CHAIRMAN

ANACLET. K. TURYAKIRA.....VICE CHAIRMAN

HARRIET WANYOTO .....MEMBER

JUDGMENT

Kaisabira Deo, the Complainant and designated as CW1 in the proceedings, claimed that he owns a piece of land at Katerera L.C.1 village, Buswaka Parish, Kyaterekera Sub -County, Kagadi District which measures 1 ½ acres.

He claimed before the tribunal among others that; he bought the said piece of land from one Sulait Matte on 13/05/2003 for Shs. 3,000,000/=. He claimed in his Witness Statement, filed on 10/05/2019 that the land in question was neighboured by that of Bosoberwa Kwebiha in the East, Bwambale Poste to the West, Matte Sulait to the North and Mumbere to the South.

He also stated in the same witness statement that Uganda Electricity Transmission Company Ltd, the Respondent came and surveyed his said land in 2016, during the process of constructing the Hoima, Mputa transmission line.

He further claimed that between 2016 and 2017 the Respondent erected metallic poles with high Voltage in his land without any compensation. He states in his said witness statement that around 2018, the Respondent came back in his land and destroyed one Jack fruit, avocado trees, Coffee plantation and banana plantation; He also claimed in the statement that the Respondent created a road on his land and destroyed two graves of his children which were on the land. He claimed that as a result of the Respondent's activities on the land, the crops and land have been consumed, leaving him greatly affected. He claimed that the Respondent's activities consumed about 1 acre of his land.

He demanded Compensation for his crops destroyed, for the land taken over by the Respondent to construct a road, money to relocate burial grounds of his relatives and money to construct another house to which he would shift as he claims that there is high voltage power passing over the one that he is occupying.

He demanded for payment of **SHs. 250,000,000=** being the cost of hiring his lawyers and Compensation for the losses and general damages.

On their part, Uganda Electricity Transmission Company Ltd, the Respondent responded that it is a parastatal limited liability Company whose mandate is to construct, and maintain electricity supply and transmission lines and in that respect undertook construction of the Hoima-Nkende Transmission line.

Respondent averred that prior to the construction of the particular transmission line, it duly conducted a feasibility study and a Resettlement Action Plan for purposes of determining the Project Affected Persons ("PAPS").

It further claimed that pursuant to the feasibility study, all persons affected by the transmission lines were captured with the assistance of the local Council authorities and villagers and their crops duly assessed and valued in accordance with the laws, and that the project affected persons were thereafter duly compensated in full for all their property affected by the project.

It is the Respondent's position that **CW1** the Complainant was not among the project affected persons for that particular project and is unknown to the Respondent and is therefore not entitled to any payment from the Respondent, having not suffered any damage. The Respondent concluded by claiming that any activities it carried out on any land are only done with the consent and knowledge of the lawful owners of the land with the required permission and in accordance with the law; The land which the Respondent is therefore using for the project is within its right, having lawfully acquired it by compensating all project affected persons, who were identified in consultation with the local authorities and villagers, and **CW1**, the Complainant is not a project affected person.

The following were agreed upon by the Parties as the issues for determination:

- i) **Whether the Complainant is entitled to Compensation by the Respondent for the suit land.**
- ii) **What remedies are available to the Parties.**

Kaisabira Deo, the Complainant and designated as **CW1** was the sole witness before the tribunal for the Complainant. The Complainant had indicated in the Joint Scheduling Memorandum (JSM) that he intended to present other witnesses namely; Suleth Matte, being the person he claimed to have bought the suit land from; Nyansi Tibeyalirwa who is a witness on the Land Sale Agreement exhibited by the Complainant as

CE1 and CE2 and is also described in the said Land Sale Agreement CE1 and its English translation CE2 as a neighbour to the right of the suit land which the Complainant claimed to have bought from Suleth Matte, and one Kule Emex who is stated in CE1 and CE2 as a witness to the said Land Sale Agreement between Suleth Matte and Kaisabire Deo, the Complainant. None of these proposed witnesses testified in the proceedings.

**CW1** offered the following reasons for their respective absences.

He claimed that Nyansi Tibeyalirwa was dead, and that Kule Emex, although alive and a pastor, was in Bundibugyo. Although not listed as a witness, **CW1** informed the tribunal that Basoberwa who was stated in the Land Sale Agreement CE1 and CE2 as a neighbour on the eastern side of the suit land and also named as a witness to the said Land Sale Agreement was also dead. He also told the tribunal that Muranga Kule John who also appears in CE1 as a witness to the Sale Agreement is alive but epileptic. **CW1**, in his oral testimony and cross examination informed the tribunal that this same Muranga Kule John was at the time of **CW1** purchasing the suit land, the L.C.1 Chairman of Katerera village where the suit land is located and that he, Muranga Kule John also witnessed the Sale Agreement by signing on it as L.C.1 Chairman and that it is the same Muranga John Kule whom he, **CW1** left in charge of the suit land in his capacity as Chairman, when **CW1** left/moved to Bundibugyo in a year he, **CW1** could not recall, until he came back to Katerera village, in a year that he could similarly not recall. He stated that he did not know how many years he spent in Bundibugyo, away from the land in Katerera village, Kyaterekera Sub-County. It was **CW1**'s testimony that Muranga Kule John stopped being Chairman in 2019 and that the current Chairman L.C.1 Katerera village was one Byabagambi.

**Issue No.1 *whether the Complainant is entitled to compensation by the Respondent for the suit land.***

To be entitled to compensation for the suit land; **CW1** must have owned the land at the time, the Respondent's alleged activities were taking place; surveys, identification of portions of land affected and identification of the owners/PAPS, compensation of the PAPS and issuance of Notice to them to vacate the affected lands; He ought to have been an owner at some and or all of these stages of the Respondent's activities.

The Complainant claims to own customary land situated at Katerera village, Kyaterekera Sub-County, Kagadi District which he claims to have acquired on 13/05/2003 from one **Sulait Matte** (according to his witness statement filed on 10<sup>th</sup> may 2019) or from **Suleth Matte** (according to Land Sale Agreement **CE1**, translated in English as **CE2**. **CW1** in his Complaint and witness statement avers that between 2016 and 2017, the Respondent in the process of constructing its Hoima-Nkende transmission line; surveyed his said land, passed high power voltage lines near his house, and that around 2018, came back to his land destroyed one Jack fruit, ovacado trees, etc; activities that he claimed consumed about 1acre of his land.

We observe that **CE1** clearly states that one **Suleth Matte** is the seller of the piece of land, whose size is however not stated in the agreement. The neighbours to the land are also clearly stated in the said agreement, which also states names of persons said to have been witnesses to the transaction. It is a pity that none of the said neighbours, and or Local Council 1 authorities of the area were called to testify before the tribunal to support **CW1**'s claim that he bought the suit land then and or ever owned this land.

It is also noteworthy that CW1's Witness Statement in paragraph 3 thereof gives a different names of **Sulaiat Matte** as the seller of the same property and this is inspite of referring to CE1 attached thereto, which states a different name of **Suleth**.

It is also noteworthy that none of the persons stated to be witnesses in CE1 (Kule Emex, and Muranga Kule John) were ever presented before the tribunal to authenticate that this transaction took place and possibly testify as to ownership then and now of the land in question, especially Muranga Kule John who was said to have been the L.C.1 Chairperson at the time of the said purchase (2003) up to 2019, also stated as a witness to the agreement CE1 and into whose charge CW1 Claims to have left the land, on leaving for Bundibugyo. It is this same Chairman Muranga Kule John whom CW1 claims was with him when he went to the Respondent's office in Hoima to complain about non- compensation. It is noteworthy that CW1 does not in the scheduling memorandum even include Muranga Kule John among his proposed witnesses. **Bwambale Sulait** who appears in CE1 and CE2 as a neighbour was also not listed nor invited by CW1 to offer evidence. This same **Bwambale Sulait** who is named as a neighbour to the land that CW1 claims to have bought, appears in the Respondent's exhibit RE1 as one of those PAPS whose land was consumed by the Respondent's activities and which land then included at the time of identification and compensation, part of the land now claimed by CW1. His personal identification is captured in the Respondent's exhibits RE2(c) comprising of his personal identification document witnessed by the L.C 1 Chairman of Katerera village on 26/02/2010, whom we presume must have been Muranga Kule John, a description of land document, thumb printed by Bwambale on 26/02/2010 describing his land affected as measuring 0.9073 acres, and his neighbours, and a notice dated 13/04/2010 from the Respondent requiring

Bwambale Sulait to vacate within 6 months his property, having been compensated on 12/11/2011.

Similar exhibits [RE2(a)] were admitted in respect of **Basoberwa Rosemary**, stated in CE1 and CE2 to be a neighbour and appearing on the same CE1 and CE2 as a witness to the said agreement of sale. Her personal identification documents are similarly dated 26/02/2010 and witnessed by the same said Chairman of the same Katerera L.C.1 village. The Respondent's notice to her to vacate indicates that compensation for her affected property of 0.2836 acres was affected on 29/02/2010, and that part of the land for which she was compensated was that which CW1 now claims ownership.

Similarly, worded documents [RE2(b)] were exhibited for another PAP, **Kiiza Emmanuel** whose 0.1863 acres is stated to have been compensated on 13/09/2010. We note that **Deborah Nakumiza, (RW1)** states in paragraph 4 of her supplementary Witness Statement filed on 18/11/2019, that through a project affected person identification process involving the Local Council leaders, Basoberwa Rosemary, Kiiza Emmanuel and Bwambale Sulait were captured as the lawful owners of the suit land, and she RW1 presented exhibits RE2(a) RE2(b) and RE2(c) already mentioned hereinbefore as evidence of the identification process of the PAPS and their lands affected. RW1 states in paragraph 3 of her said supplementary witness statement that a review was later carried out by the Respondent in respect of the Claimant's claim and it was established that the three above named persons were compensated in respect of the land now claimed by CW1; and this was after the identification process which had involved the Local authorities. Respondent exhibited RE1 in combination with RE2(a) (b) and (c) to illustrate this point. We found no good reasons to disbelieve this testimony and evidence.

It is however curious that **CW1** appears to suffer from amnesia in that he cannot recall when he left for Bundibugyo, and when he returned to re-possess from Muranga Kule John the land he claimed to have bought in 2003.

It is also puzzling that during cross-examination, **CW1** initially stated that he put up the structures on the land in issue before he went to Bundibugyo. At a later stage, during the same cross examination, **CW1** however contradictedly stated that “I constructed the house on the suit land after I came back from Bundibugyo”. **CW1** had also indicated in the Joint Scheduling Memorandum that photographs and a letter from the L.C.1 Chairman would be some of his documentary evidence to support his case or claims.

For reasons best known to the Complainant, none of these were presented. We believe that they could have shed more light in respect of his claim of ownership of the suit land. It is also interesting that paragraph 4(b) of the Complaint and on page 1 paragraph 2 of the Complainant's Written Submissions filed in the tribunal on 18/02/2020, **CW1** states that ‘the Respondent's agents while in the course of constructing Nkende-Hoima, transmission power line erected electric towers (pylon) carrying high power voltage in the Complainant's land.....’. The claim of electric towers however it is not mentioned at all in the Complainant's testimony in his evidence in chief and in cross-examination nor is there any other evidence of the same put forward during the proceedings. The Respondent; in its submissions raises or points out the fore mentioned omissions, inconsistencies and contradictions and others in the Complainant's pleadings, testimony and other evidences, and the Respondents are consequently of the opinion that they are of material significance to render the Complainant's testimony unreliable to base on a decision in favour of the Complainant.



Respondent submitted that evidence adduced in support of ownership of the suit land in paragraphs 3 and 4 of CW1's Written Statement wherein CW1 states the names of the seller as **Sulaiat Matte**, is inconsistent with CE1 and CE2 where the name of the seller is stated to be **Suleth Matte**; Respondent points out that no explanation was offered by the Complainant for this discrepancy or difference in names. Respondent submitted that it was also impossible to determine the size of the land that the Complainant claims to have purchased. Although the Complainant claimed that his land was about 1 $\frac{1}{2}$  acres, this claim is not backed up by any evidence. It was therefore impossible to determine the size of the land the Complainant might have purchased.

Respondent further pointed out there were also inconsistencies regarding the particulars of the neighbours to the land said to have been purchased. According to CE1 and CE2, the Land Sale Agreements, the following were the neighbours:

- Basoberwa in the East;
- Bwambale Sulait in the West;
- Nyansi Tibeyalirwa to the right;
- Bahwire Tomas to the left

But according to paragraph 4 of the CW1's Witness Statement, a new person *Bwambale Poste* is stated to be the neighbour to the West and Bwambale Sulait who appears in the sale agreement now disappears. Two other new persons *Matte Sulait and Mumbere* are now stated as the neighbours. These three are not captured in CE1 and CE2 as neighbours, while Bahwire Tomas who appears as a neighbour in CE1 and CE2 is omitted along with Bwambale Sulait in paragraph 4 of the Witness Statement.

The Respondent argues that the above mentioned inconsistencies are grave in as far as they relate to proof of the Complainant's ownership of the suit land and submits that the evidence presented by the Complainant consequently be rejected.

Respondent also relied on the testimony of Respondent's only witness RW1 Deborah Nakumiza, who described herself as the Respondent's Projects Community Laison Officer.

RW1 informed the tribunal that prior to the construction of the Nkande-Fort Portal- Hoima Transmission line, the Respondent conducted a comprehensive feasibility study and a Resettlement Action Plan Study for purposes of determining projected affected persons. She asserted that the Complainant was unknown to the Respondent as a Projected Affected Person. RW1 stated that the land which CW1 claims to have owned since 2003 was after the feasibility study which disclosed all Project Affected Persons, determined to be owned by three PAPS who were duly compensated for it, having been duly disclosed as original owners.

We note that Basoberwa Rosemary and Bwambale Sulait appear in CE1 and CE2 as neighbouring the land that CW1 claims to own! Respondent's RW1 as stated herein testifies that the same Basoberwa Rosemary, and Bwambale Sulait and Emmanuel Kiiza (PAPS) were verified as owners of the land, now in dispute, by the L.C 1 Chairperson of Katerera village, who endorsed his stamp on 26/02/2010 on their Personal Identification Documents as shown in Respondent's RE2(a) RE2(b) and RE2(c) as the affected persons. CW1 in his testimony in cross examination confirmed that the Chairman L.C.1 was one Kule Muranga John at the time he bought the land in issue and was also a witness to the transaction and only ceased to hold office only in 2019.

It is the Respondent's argument that the same Kule Muranga John, Chairman L.C.1 Katerera village who by CW1's evidence witnessed the Complainant's purported land purchase agreement in 2003 and was also left in possession of the same when CW1 left for Bundibugyo, could not plausibly endorse in 2010 the three PAPS mentioned above (Basoberwa, Rosemary, Emmanuel Kiiza and Sulait Bwambale) as the rightful owners of the suit land as captured in RE2(a) RE2(b) and RE2(c), if the land was rightfully that of the Complainant.

The Respondent further argues that while the Complainant states that the Respondent surveyed his land in 2016, the records RE2(a), RE2(b) RE2(c) as exhibited by the Respondent, show that the actions of surveying and identification of PAPS, compensation and issuance of vacation notice took place about 2010-2011, well before 2016. The Respondent's RW1 in her testimony and evidence presented showed that long before 2016, and by 2011, Respondent had completed payments and even issued notices to vacate to the three Project Affected Persons, who were previously identified as the owners of the customary land which CW1 claims.

The Respondent's position is that the foregoing activities took place following a thorough due diligence which identified the lawful owners of the suit land in the presence of the local authorities and the village mates. Neither the Complainant nor Muranga who allegedly was left in charge of the suit land ever showed interest or asserted his claim in the suit land and no record of any such interest was ever captured. The Respondent submits that it all along aimed to ensure that only the rightful claimants of the land were compensated as per the requirements of the Constitution of Uganda and to that end its field officers and surveyors conducted a ground verification and survey of all land owners, numbering over 2000 PAPS, along the Transmission line corridor, resulting in the said three PAPS

being separately identified as the rightful owners of the land and being compensated for the suit land and there was nothing to show that the suit land belonged to the Complainant. Indeed, nobody other than CW1 himself came to support his claim.

The tribunal has evaluated the testimonies and evidence presented by the Complainant, CW1 who was the only one to testify in his favour and that of the Respondent whose sole witness was RW1, and has come to the conclusion that on the balance of probabilities, the Complainant has not shown that he owned the land in issue, upon which the Respondent carried out its activities in respect of the Nkende- Fort-Portal-Hoima Transmission line. CW1's evidence of ownership of the suit land is riddled with uncertainties, inconsistencies and contradictions as pointed out in the submissions of the Respondent which submissions we have found to be cogent and convincing and we particularly point out that apart from the evidence of the Land Sale Agreement CE1 and CE2, nothing else points to CW1's purchase and ownership of the suit land in 2003, and continued possession thereafter while evidence of the Respondent's feasibility study to identify PAPS carried out, all the way in 2010 to compensation which went as far as 2012 appears cogent.

The fact that the area of land CW1 purported to have purchased and that which the Respondent allegedly consumed cannot certainly be ascertained, coupled with inconsistencies in the names of the supposed neighbours and his seeming amnesia as to when he left Katerera village and when he came back, does not improve the quality of evidence adduced or presented by CW1 to support his claim of ownership of the suit land at the time the Respondent's activities took place, including compensation for the affected land to persons, then identified as owners who by the act of receiving compensation relinquished their interests and rights to the lands that were compensated.

If it may be true that CW1 purchased the land in 2003, he does not offer a reasonable explanation as to why he never at any one point during the process of the Respondent's activities indicated personally or through Muranga Kule John who he claims to have put in charge of the land, that he had an interest in the suit land; although he claimed to have raised a Complaint at the Respondent's Hoima office, there is no record of that fact nor any witness to support that assertion. We don't attempt to explain how CW1 may now come about to be occupying, if at all he is doing so, part of the land on which the Respondent is carrying out its activities and which the Respondent has shown to have compensated the Project Affected Persons, identified by its surveyor, with the help of local leaders; it suffices for us that we are not convinced by his testimony that he owned the land by the time the Respondent carried out its activities of survey and identification of affected persons and or compensated the identified PAPS.

In the above circumstances it is our opinion that Complainant is not entitled to Compensation by the Respondent for the suit land, for the reason of not having satisfactorily proved to us ownership of the same. The issue as to remedies available to the parties is also answered largely by this finding.

Having found that Complainant is not entitled to compensation by the Respondent, for the reasons we have stated hereinbefore, we don't find it necessary to consider in-depth the issue of remedies available. We however note and agree with the Respondent that the Complainant did not in any case even justify or submit any basis for his claim of **Shs. 250,000,000=**, let alone the fact that he did not demonstrate to the tribunal in any way that he was an injured person save for his bare claim of injury.

Respondent has on the other hand demonstrated that it duly identified with the assistance of the Local Council 1 Chairman of Katerera the true owners of the suit land and that these were duly compensated in time by the Respondent and that it is rightfully utilising the land in issue. The complainant is consequently in our opinion not entitled to the compensation he sought nor to general damages.

Hence forth the Complainant's Claim is dismissed.

Costs are awarded to the Respondent.

Charles Okoth- Owor:

  
\_\_\_\_\_  
CHAIRMAN

26/03/2021

Anaclet. K.Turyakira:

  
\_\_\_\_\_  
VICE CHAIRMAN

Harriet Wanyoto:

  
\_\_\_\_\_  
MEMBER

26/03/2021