

**THE REPUBLIC OF UGANDA**  
**THE ELECTRICITY DISPUTES TRIBUNAL**  
**COMPLAINT EDT. NO. 08 OF 2015**

**NAMATOVU ALICE .....COMPLAINANT**

**VERSUS**

**UMEME LTD .....RESPONDENT**

**TRIBUNAL QUORUM: - CHARLES OKOTH-OWOR - CHAIRPERSON**  
**- ANACLET TURyakIRA - VICE CHAIRPERSON**  
**- MOSES KIZZA MUSAAZI - MEMBER**

**JUDGEMENT**

Mr. Muniina Charles, whom she gave special powers of Attorney, represented the Complainant, Ms. Namatovu Alice. Nagemi Peter John from M/s Nagemi & Co. was the Complainant's Counsel , while Byabazaire Naome from M/s Shonubi, Musoke & Co. Advocates, represented the Respondent, UMEME Ltd, an electricity distribution Company.

The issues agreed for determination were as follows:

1. Whether or not the Respondent, UMEME LTD, committed trespass to the land of the Complainant?
2. If so, Whether or not the Complainant is entitled to compensation from the Respondent?
3. Whether there are any remedies available to the Complainant?

The Complainant sought

- (i) Special damages amounting to UGX 10,000,000 (Uganda Shillings ten million) due to destruction of her crops.
- (ii) General damages of UGX 15,000,000 (Uganda Shillings fifteen million) due to the actions of the Respondent's employees by trespassing upon her land
- (iii) Prohibition of further use of the corridor through which the electricity power line of the Respondent passed before it was relocated.
- (iv) Costs of the suit.

The Respondent on the other hand, submitted that the Complaint should be dismissed with costs to the Respondent. The reasons advanced were (i) the

power line had been installed on the assumption that it was at the boundary of the Complainant's land (ii) the line was relocated, with haste and within a month, to the road reserve when the Complainant lodged her complaint.

The pleadings of the Complainant [PE1] are that sometime in 2011, without permission and while she was away from home, the Respondent's employees or agents erected an electricity power line (consisting of poles and wires) that passed through her land situated at plot 79, Block 191, Mengo County, Magere Village. The plot is her occupancy (kibanja) where she lives and grows various fruits for commercial and domestic use. This action of trespass was done in one day because upon returning home, she found the power line already in place.

She immediately alerted the LC officials by a letter of complaint dated 10.3.2011 [CE IV]. She made several visits to the Respondent's offices at Bombo District Office but in vain. In 2013, after almost 2 years of going to the Respondent's offices, she formally lodged her complaint dated 11/01/2013 that was received on that day by a one Sembatya [CEIII].

On the 4.2.2013, she wrote a follow up letter [CEV] which was received by a Mr. Gerald Mukasa on the same day who wrote an action on it saying "**We shall handle this work on Thursday 7.2.2013. Conductors will be relocated from your land to the road reserve**". The Respondent's officials kept their promise and the power line was relocated on 7.2.2013. On 5.2.2013 (one day after the promise by the Respondent's official), she wrote a letter to the Respondent's Company Secretary pointing out that (i) the trespass was criminal (ii) she had suffered losses and hence needed to be compensated [CE VI].

On 15.2.2013 she caused action by her lawyers (M/S Kityo & Company) to write to the Respondent's Company Secretary seeking compensation of UGX 8,000,000 otherwise legal action would be taken [CE VII].

During cross-examination, the Complainant stated that she verbally complained to the Respondent as soon as the power line was erected. She was advised to use the Respondent's Helpline which she did but in vain. She then wrote a letter of complaint on 5.10.2012. She wrote a second letter dated 11.01.2013 [CE III]. It is only after her third letter of February 2013, that the Respondent acknowledged and acted upon her complaint [CE V]. She stated that when she asked for compensation, Engineer Gerald Mukasa told her that he does not deal with compensation and advised her to contact the Respondent's management.

During re-examination, she said that considering the loss of fruits and potential income from them and in consideration of lost time (2011-2017), she expected the Tribunal to award her a total of UGX 25,000,000 composed of (i) trespass fine; UGX 15,000,000 (ii) property destruction; UGX 10,000,000. She conceded that despite the destruction, she still earned some income from the fruits.

The Complainant's sole witness was Mr. Charles Mutanda [CW 2] whose written evidence in Chief was tendered in. Mr. Mutanda was the Secretary of Defence of the Magere Village and knew the Kibanja and the owner very well. He affirmed that a power line had been erected through the Complainant's kibanja. He stated that when the couple (Mr. Muniina and his wife Namatovu) complained to the LC by way of letter that was dated 10.3.2011 about the unauthorized erection of the power line through their land, they were advised to take up the matter with the Respondent's area officials. He stated that the relocation of the power line was done in 2013; almost two years after they had complained to the LC. However, the Respondent did not make any compensation whatsoever.

The Respondent's sole witness was Mr. Benedict Mayende. He was designated as RW1 and his written statement and attachment admitted as RE1 and RE2.

Under cross-examination, he re-stated and affirmed as follows:

1. He is a senior Way-leaves Officer of the Respondent.
2. He was instructed by the Respondent to visit the Complainant's site, assess the situation and make an evaluation report so that the Complainant may be compensated for the loss and damage of property. He visited the site and was conducted through the previous power line corridor by Mr. Charles Muniina [CWI]. He counted the damaged fruit trees; both permanently damaged and those re-growing.
3. He submitted his evaluation report, based on Wakiso District guidelines and rates, on 11.10.2016. This report was tendered in as RE 2 and its total value was UGX 916,500. The report did not capture pawpaws although the Complainant claims these had been damaged.
4. The Respondent was ready and willing to pay the compensation, but the Complainant rejected the amount as being too low.
5. He agreed that the compensation, in addition to the direct fruit damage, only took into account the lost time of re-use of land and gave it a value of 30% (i.e. UGX 211,500). This does not realistically consider the expected loss of income for the period. He contended that these were guidelines from Wakiso District and he could not

- work against them. Furthermore, the matter was reported to the Respondent in 2013 and hence he was not given any information on exactly how long the trespass had been.
6. He stated that the power line was low voltage and the cables were in an insulated bundle. Therefore they never posed any potential danger to the Complainant or anyone else. This meant that the Complainant could have fully utilized her land during the period the power line passed through her kibanja.
  7. He stated that his written statement was written earlier (6.9.2016) than the evaluation report which was done 11.10.2016 but the two should be considered taking into account the developments that the Respondent re-routed the power line and has offered to compensate the Complainant.

We, the Electricity Disputes Tribunal (EDT), have on our part carefully considered the pleadings, testimonies of and other evidence of the respective parties and also considered their respective written submissions.

Let us consider first issue: **Whether or not the Respondent, UMEME LTD, committed trespass to the land of the Complainant?**

It is not in dispute that the Complainant did not give permission for way leaves to the Respondent otherwise the Respondent would have produced such evidence. It is not in dispute that the Complainant lodged a written complaint to the Respondent on 4.2.2013, received by the Respondent's official, one Gerald Mukasa [CE V]. Mr. Mukasa did not only acknowledge receipt of the complaint but endorsed it "**We shall handle this work on Thursday 7.2.2013. Conductors will be relocated from your land to the road reserve**". The Respondent's officials kept their promise and indeed the power line was relocated to the road reserve. This act clearly serves as proof that indeed they admitted to a trespass, which they quickly rectified. [We, the Tribunal, would like to commend the Respondent's swift action of acting in three days after receiving the Complaint].

We however affirm that the Respondent committed a trespass unto the Complainant's land, in that they entered her land occupancy and also erected thereon poles and wires thereupon without her consent.

The second issue "**If there was a trespass whether or not the Complainant is entitled to compensation from the Respondent?**". Indeed the tribunal finds it reasonable and fair that the Respondent should compensate the Complainant. The Respondent had indeed come to the same conclusion during the course of this trial. The Respondent had gone

ahead to value the losses and made an offer of UGX 916,500. However this offer was rejected by the Complainant for being far below her proposal of UGX 25,000,000.

We have carefully considered both values and have come to the following figures as reasonable compensation:

- (i) Property destruction; UGX 916,000 + 30% other unaccounted fruit = UGX 1,192,000
- (ii) Trespass (for the period we could ascertain as 4.2.2013 - 7.2.2013) shall attract general damages of UGX 2,500,000/=

The third issue: **“Whether there are other appropriate remedies available to the Complainant?”**. The last appropriate remedy is that the Respondent shall pay costs of the suit and interest on the above sums at the rate of 24% p.a from the date of judgement to full payment.

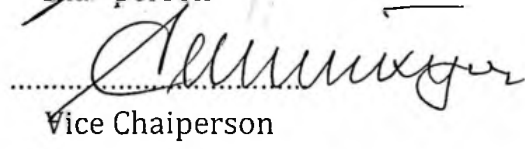
We So Order.

Dated at Kampala this 15 day of August 2018.

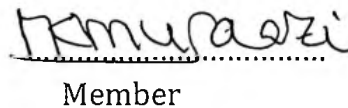
CHARLES OKOTH-OWOR

  
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Chairperson

ANACLET TURYAKIRA

  
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Vice Chairperson

ENG. DR. MOSES K. MUSAAZI

  
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Member