

THE REPUBLIC OF UGANDA
IN THE ELECTRICITY DISPUTES TRIBUNAL AT KAMPALA
MISCELLANEOUS APPLICATION NO. 01 OF 2020
(ARISING FROM COMPLAINT NO. 05 OF 2020)

MICHAEL MUGAMBE KIBIRANGO.....APPLICANT

VERSUS

UMEME LTD.....RESPONDENT

TRIBUNAL CORAM

CHARLES OKOTH – OWOR	CHAIRMAN
ANACLET TURYAKIRA.....	VICE CHAIRMAN
DR. TERRY KAHUMA	MEMBER

RULING

On 5th March 2020, the Applicant, who is the Complainant in the main Complaint EDT No. 05 of 2020 filed Misc. Application No. 01 of 2020 seeking the following orders:

1. That the Respondent forthwith reconnects power at the Applicant’s maize mill or premises pending the determination of the main suit, EDT 05 of 2020.
2. Provision be made for costs of this application.

We wish to note here that the use of the word “suit” in the tribunal is misguided; the correct nomenclature before the tribunal is “Complaint”. There is therefore a pending Complaint. When Counsel Luwalira appeared before tribunal, he confessed that he was appearing before the tribunal for the first time.

We think the use of the words “suit” instead of “Complaint” is however not fatal to the Application but Counsels who appear before the tribunal must endeavour to understand terminologies of the tribunal as opposed to the traditional Courts.

The grounds of the application were mainly that: the Applicant's maize mill was disconnected by the Respondent in March 2017 over failure to pay outstanding arrears. That the Respondent has since then disconnected power several times. That as a result of the disconnection, the Applicant has lost revenue amounting to Shs. 360,000,000. That the Applicant has also over paid Shs. 57,000,000. That the Applicant's business is currently down due to the irregular and illegal disconnection of the Respondent's power and that the continued disconnection is unreasonable and must be reversed pending determination of the main Complaint.

The application is supported by the affidavit of Mr. Michael Mugambe, the Complainant. The affidavit is basically in tandem with the averments in the grounds in support of the application and it is unnecessary to recite the provisions in the affidavit extenso. The only relevant provision in the affidavit which is not reflected in the grounds is that several meetings have been held by the parties but to no useful conclusion.

The application is opposed by the Respondent through an extensive affidavit in reply by Ms. Petua Kyarisiima who is the District Manager, of the Respondent, in charge of Natete office where the Complainant's mill is located. The gist of the affidavit is that the application, is frivolous, incompetent, incurably defective, full of deliberate falsehoods and without basis.

Ms. Petua Kyarisiima avers in her affidavit that the Applicant has not suffered any loss, and if he has, the same was self- inflicted because the disconnection was due to the applicant's failure to pay his electricity bills. She maintains the disconnection was regular and lawful and all procedures were followed to disconnect him. She also avers that the Respondent will be inconvenienced and crippled in its performance, by an order of reconnection without payment.

On the day of hearing, the Applicant was represented by Mr. Luwalira Muhamed while the Respondent was represented by Mr. Alex Kabayo. Both Counsels chose to make oral submissions and went ahead to address the tribunal.

When Luwalira started his submissions, the tribunal requested him for guidance on the provisions of the Electricity Act which he had quoted in his application. He informed the tribunal that he had grounded his application on the **Electricity (Primary Grid Code) Regulation 2003, Regulation 15.6.1** and also **Regulation 20 (3)**. He said the applicant was disconnected in March 2017 on failure to pay and that he paid but was later disconnected several times. He contended that the mill is the only means of livelihood for the Applicant and that the gist of contention is a faulty meter at the Applicant's premises. He further contended that since the Applicant had filed a Complaint to Electricity Regulatory Authority (**ERA**) he should not have been disconnected. In his submission Counsel cited two earlier decisions of the tribunal where the tribunal granted prayers for reconnection. The 2 cases are *Katakuwange Fred Vs UMEME Ltd, EDT.NO 019 of 2017*, *Johnrick Trading Co. and Property Consultants Ltd Vs UMEME Ltd, EDT No. 017 of 2019*.

On his part, Mr. Kabayo for the Respondent contended that disconnection is a method of recovery provided for under the **Electricity (Primary Grid Code) Regulation 15.1**.

Mr Kabayo contended that while the application was premised on **15.6. (1) (a)** which prohibits the Respondent from disconnecting a customer when there is a Complaint lodged in **ERA**, no evidence was available either, in the body of the application or the Applicant's affidavit to prove this fact. He contended that on the contrary a Complaint was filed in **ERA on 24th March 2020**, a month after disconnection.

He contended that the Applicant is not protected by provision of **Regulation 15.1.1** in the **Electricity (Primary Grid Code) Regulation 2003** as contended by the applicant.

Mr. Kabayo went further to justify the meter test and its accuracy. We think it is premature to delve into business of the meter test as this is a subject of the substantive Complaint where evidence may be adduced and witnesses cross-examined.

On the 2 cases relied on by Counsel Luwalira; Mr. Kabayo contended that the cases are distinguishable on the facts.

We have had the opportunity to peruse the application and the supporting affidavit. We have also perused the affidavit in reply and rejoinder. We have listened to the submission of both Counsels.

The application is mainly predicated on the provisions of the Electricity (**Primary Grid Cod**) 2003, **Regulation 15.6.1**.

The provision states; *“A licensee shall not disconnect supply to a consumer’s supply address.....”*

(a) *“Where a consumer has made a Complaint directly related to the reason for the prepaid disconnection to ERA, the tribunal, or another external dispute resolution body and the Complaint remains unresolved”.*

Both application and the affidavit in support did not disclose when the applicant filed a Complaint in **ERA**. The issue of **ERA** was raised in the affidavit in reply by Ms. Petua Kyarisiima. It is only after Petua Kyarisiima raised the issue of Complaint before **ERA** in her affidavit in reply that the Applicant mentioned it in his affidavit in rejoinder.

In his submission Counsel Kabayo contended that the Complaint was lodged in **ERA on 24th March 2019**, one month after disconnection of the Applicant's supply. Mr. Kabayo, further relying on the affidavit of Petua Kyarisiima contended that the disconnection was **on 17th Feb 2017**.

The Applicant either by intent or default does not attach any Disconnection Order to the application. Neither does he attach the letter to **ERA** evidencing the date when he filed his Complaint.

The basic evidence principle is that he who alleges must prove. We do agree with Mr. Kabayo that having predicated his application on the grounds that at the time of disconnection, the Applicant had a pending Complaint in **ERA**, he had the burden to prove there was such a Complaint which would render the disconnection illegal. The Applicant having failed to prove the existence of the Complaint in **ERA** before or at the time of disconnection, this ground fails.

In respect to the 2 cases cited by Counsel for the Applicant; we agree with Mr. Kabayo that the 2 cases are distinguishable, i.e in the case of Johnrick Trading Company, there was evidence of an existing Complaint pending before **ERA**. The tribunal was therefore of the view that the disconnection offended the provisions of the **Electricity (Primary Grid Code) Regulations 16.1.1 (a)**. In the case of Katakawange M. Fred the tribunal considered the peculiar circumstances of the case including but not limited to the fact that the Applicant was unrepresented, and his allegation that the disputed bill arose from power consumed by a third party with acquiescence /consent of **UMEME**, the tribunal granted a conditional order.

We wish to state here that the grant of orders of reconnection is a matter of judicial discretion by the tribunal and must be exercised in exceptional circumstances. Each case must therefore be decided on its own merit. The Applicant must prove that the facts of his/its case deserve such orders and not merely allege or assert in the pleadings.

Where an Applicant premises his application on facts or the Law, which he fails to prove, the tribunal will be constrained to exercise its discretion in his favour. This is the case in this instance; the Applicant has not provided evidence of the grounds of his premises to our satisfaction and, indeed at all!

In conclusion this application fails and the same is dismissed with costs.

We so order.

Dated at Kampala this.....22nd.....day of.....July.....2020

CHARLES OKOTH-OWOR

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Chairperson

ANACLET TURYAKIRA

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Vice Chairperson

DR. TERRY KAHUMA

.....
Member

