

THE REPUBLIC OF UGANDA

THE ELECTRICITY DISPUTES TRIBUNAL

COMPLAINT EDT. NO. 13 OF 2015

OBUA FRANCIS \_\_\_\_\_ COMPLAINANT

VERSUS

UMEME LTD \_\_\_\_\_ RESPONDENT

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

JUDGMENT

The Complainant, Mr. Obua Francis was self-represented while Counsel Namusikwe Priscilla from M/s Shonubi, Musoke & Co. Advocates represented the Respondent, UMEME LTD, an electricity distribution Company.

The issues for determination were as follows:

1. Whether the Respondent was liable for the damage of the Complainant's grinding machine?
2. Whether the Complainant is entitled to the remedies sought?

The Complainant sought special damages amounting to UGX 107,935,000 (Uganda shillings one hundred and seven million, nine hundred and thirty five thousand) giving a breakdown of the replacement values of the spoilt milling equipment, the projected loss of income for several years, as well as transport and accommodation expenses in pursuit of redress from the Respondent [exhibit **CE1-3**].

The Respondent, on the other hand, submitted that the Complaint should be dismissed with costs awarded to the Respondent. The reasons advanced were that the Respondent was not responsible for the burning of the Complainant's motor (which was part of his grinding machine), the cause being the Complainant's failure to maintain the electrical installation within the factory. In clarification, the Respondent cited the **Electricity Act** and in particular the **Electricity (Primary Grid Code) Regulations, 2003**, **Clause 6.3.1** which states that "the Consumer shall use its best endeavours to ensure that his/her electrical installation and any equipment within it (a) complies with the Code and (b) is maintained in safe condition".

The pleadings of both parties show that the Complainant sued the Respondent Company (Umeme Ltd.) for the burning of his electric motor that was part of his

grinding mill used in the commercial business of grinding and selling foodstuffs like maize and cassava flour.

The Complainant alleges, from his written statement [exhibit CE2] as follows:

In March 2012, the Respondent's officials relocated the meter, that records electricity energy consumption of the mill, from his premises to a nearby electricity pole and at the same time disconnected him from supply because of an alleged outstanding bill. The relocation was in a way that the meter box and the meter were removed from the factory wall and then mounted on an electricity pole nearby. An underground armoured cable was used to connect the power from the meter to an isolator, which would be used to disconnect the power supply from the mains. From the isolator, the power would go to the starter of the grinding machine.

On the 5.12.2012, he went to the District Office of Umeme (Gulu). Following the negotiation with Respondent's Commercial Manager, Mr. Dan Mabirizi, they arrived at an outstanding bill of UGX 400,000/=, after a fraud bill imposed by the Respondent, had been removed. He paid the bill and was told that his power would be reconnected from the pole. But in his letter to the Legal Manager, Umeme Ltd, dated 2.4.2015, he states that "I agreed with my commercial officer then I paid 400,000/= my total bill was reduced to 1.5 million shillings and this is shown in the bill statement dated 19<sup>th</sup> March 2015".

On the 23.12.2012, the Respondent's officials reconnected his power.

On the morning of 26.12.2012, he started the grinding machine but it worked for only about two minutes and stopped. He saw smoke coming out of the isolator box and the motor terminals. Upon opening the isolator box, while smoke was still coming out, he noticed that one terminal (the Yellow phase) from the cable was hanging and not connected to the isolator terminal. This connection, he affirms, was omitted/left loose by the Respondent's technicians who carried out the relocation of the meter box. But the other two terminals (the Red and Blue phases) were firmly connected and no soot is on them up to date. When he checked the motor windings, he also noticed that the Yellow phase cable ends were completely burnt whereas those of the Red and Blue phases were intact.

He finally alleges that since that day, 26.12.2012 to date, he has not operated his grinding machine, which has caused him a lot of financial loss including loss of customers and failure to service bank loans.

During his oral submission; the Complainant re-stated that his machine was burnt in 2012 and that in 2013 he obtained a loan from the Centenary Bank (Lira branch). Because of the delay by the Respondent to compensate him for the burnt motor, he defaulted in servicing the loan as evidenced from the Bank's correspondences [Exhibits CE8-10]. In an attempt to resume the business, he tried to replace the burnt motor with another one, but the Centenary Bank confiscated the (replacement) motor. That therefore, with the failure to resume business, the Complainant has lost customers in the last 2 years that include Ngai Secondary School. He claimed that before the motor was burnt, his daily income was about UGX 30,000 in addition to UGX 800,000 per school term from Ngai Secondary School. In addition, the Business Plan, written for him by the

Uganda Gatsby Trust (Makerere University), could not be implemented. This meant a loss of UGX 159,360,000 as expected income in a period of 12 months. Hence in the last two years, 2013-2015, the Complainant stated that he had lost business of customers who were using his grinding machine, one motor was burnt while a second one was confiscated. Furthermore he has spent a lot of money in transport in an attempt to get redress with the intervention of other persons and organizations. In specific terms he claimed that he went to Umeme Limited Headquarters in Kampala, Electricity Regulatory Authority (ERA) headquarters in Kampala, UAP Insurance, the Water and Electricity Consumers' Association and finally to the Electricity Disputes Tribunal (EDT).

When the Complainant was cross-examined by the Respondent's Counsel, he stated as follows:

1. He obtained a loan of UGX 1.0m from the Centenary Bank in order to pay an outstanding electricity bill.
2. The wiring of his electrical installation at his mill was done in 1993 by a UEB technician whose name he could not remember because it was such a long time ago. The installation was tested and was passed by Umeme but no Certificate of Completion was issued to him.
3. On the fateful day, after switching it on, the motor worked for a few seconds and then it blew; there was heavy smoke from the machine and at the isolator.
4. Among the Respondent's team that reconnected his power, he knew one person though he could not remember his name.
5. When the motor got burnt he did not get any technician to check out the cause of the damage.
6. His education was up to Senior Four (from Ataparrah Secondary School) but he did not complete the class. He was not an expert in electrical installations.
7. He only had copies of the photos showing the burnt out motor and the premises because the originals were on the Respondent's computer.
8. In his letter that was dated 11.3.2013, he stated that the meter relocation was done on 10.12.2012. But in his written submission (CE2) he stated that the relocation was done in March 2012. When asked to clarify, he affirmed that the date was 10.12.2012.
9. He agreed that the Respondent's team went to relocate the meter using a supply cable and that it was used to connect power from the meter box to the isolator in the factory. To confirm his understanding, he drew a simple wiring diagram.
10. He agreed that he did not know what a load cable is. He also did not know what they call a cable which connects power from the transformer to the meter.
11. He stated that although his electricity power was connected 1993, he irregularly carried out maintenance.
12. He stated that UAP Insurance Uganda Limited, who had been requested by the Water and Electricity Consumers' Association to assist him get compensation from Umeme Ltd, told him that his motor was burnt because of negligence.
13. He stated that the Respondent sent an engineer from Kampala who made a report, which affirmed that, the burning of his motor was not Umeme's fault and he (the Complainant) was given a copy. But he stated that the report's conclusion was wrong.

14. He did not understand the question whether wiring to the isolator inside the factory was "internal" wiring or not.

At the end of the cross-examination, the Complainant wished to clarify and he stated as follows:

1. The electrical earth connection had had no problem ever since it was done in 1993.

2. The Respondent's report was given to him in 2016.

3. The last day he operated the mill without a problem was towards the end of March 2012. He had been off power supply because of an alleged fraud bill. But he could not remember the details.

In his final written submission, received by EDT on 14.3.2017, the Complainant stated as follows:

1. That ever since 2012, when the Respondent's technicians caused the burning of his motor, he had incurred huge financial losses. He had built up a clientele base of schools, institutions and individuals ever since he started the foodstuff grinding business in 1993. He had two other similar businesses elsewhere. He was planning to start on a fourth one but this calamity stopped the process. Because of demand for his services, his business was a 24-hours operation.

2. During the meter relocation exercise, he challenged the Respondent's technicians as to why they had not used a joint box at the place where the motor had been. The technicians claimed to have forgotten to bring the joint box. He had wanted them to go back and bring the box but they pleaded with him that they had a busy schedule and would not return to Ngai Trading Centre soon. Therefore, in the interest of time, he allowed them to connect the cable directly to the isolator. In order to do so, they made a hole through the wall where the cable was passed. In his opinion, it was unlawful for electricity power to be connected without a joint box and the Respondent should be completely held responsible.

2. That routine maintenance was always carried out in his three milling factories and there had never been a failure before at any one of them.

3. The motor was burnt because of a loose connection and this can be confirmed by other Respondent's technicians whom he had shown the isolator whenever they were inspecting the power transmission lines on a weekly basis.

4. That since the Respondent's technicians neither gave him notice nor brought any written permission to relocate the meter, despite his asking them to go back and bring the same, it was conclusive that the burning of the motor was intentional. Therefore, the Respondent should meet all the four years plus losses; from 26.12.2012 to date.

5. That when the incident occurred, he immediately reported the matter to Respondent's Gulu District Manager, Madam Harriet. In addition he reported the matter to the Respondent's Headquarters in Kampala (Rwenzori House). He also wanted to report the same to the Police post of Ngai Trading Centre as well as to the LC 1 chairman, but the Police told him to patiently wait.

6. On 5.12.2012, he reached an agreement with the Respondent's Commercial Officer (Mr. Dan Mabirizi) that the alleged fraud bill (whose amount he did not state) be removed. This was done and the Complainant immediately paid the balance, which was UGX 400,000. The Commercial Officer assured him that his

power would soon be reconnected (from the pole where it had been disconnected in September 2012).

7. Some days later, the Complainant met some Respondent's workers who were replacing transformer poles in Ngai Trading Centre. He therefore assumed that they had also gone to reconnect his power during the same exercise. Quoting verbatim from his final written submission **"The Complainant made it clear that other technicians came on Sunday to reconnect him from the pole, then Monday morning 26th/12/2012 he started the motor and that was when the motor was burnt, this could have happened on Sunday but the Complainant was in Church"**. In other words, the technicians called him and told him that they had finished to reconnect him to power from the pole but if it was a working day he was going to start the milling machine and they were going to see smoke. [This means that the Complainant negotiated with the Respondent's team to reconnect his power on Sunday (probably on Christmas Day or on 23.12.2012 which, was actually Sunday)]. In his letter to the Legal Manager, Umeme, dated 2.4.2015, he stated **"After three weeks then the technicians went and connected me on 23<sup>rd</sup>/Dec/2012 but from the pole and three days later that was on 26<sup>th</sup>/Dec/2012, immediately after Christmas eve, when I started my machine as usual, the machine stopped by its self that was after 3 to 5 minutes."** They did so and phoned him, while he was still in church, that the work had been completed. Had it not been a non-working day, the Complainant would have re-started his machine in the presence of the technicians. He believes that they would have witnessed the burning incidence. But he had to wait until the following day, which was 26.12.2012, and that is when the motor got burnt.

8. In 2011, the Complainant started getting fraud bills and he had to go up the respective Headquarters (in Kampala, Rwenzori House) to resolve the issue. These actions led to delays in servicing his bank loans. Indeed the Centenary Bank (Lira branch) swung into action and confiscated his other motor, which he had brought to replace the burnt motor. However, the bank did not take away motor's starter (seen in exhibit CE2(f)).

9. The summary of his claims are (i) loss of two motors (of power capacity 30 & 20 HP) totaling UGX 10,500,000, (ii) loss of business from the two motors for the period 2012- 2017) totaling UGX 95,770,000 and (iii) cost of transport, food and accommodation totaling UGX 1,665,000. The grand total is UGX 107,935,000.

The Complainant's first witness (CW2), Mr. Dickson Omara, stated under examination in chief as follows:

He was employed by the Complainant as a cashier at the milling site in Ngai Trading Centre during the period of 2010- December 2012. His duties were to collect money from the customers and to keep records. Some of the big customers were Ngai SS and Iceme Girls SS. In addition, he kept record of some expenses. There were a total of five (5) workers earning in the range of UGX 20-30,000 per day but were paid as wages except the machine operator and the cashier who had salaries. After 2012 all workers were laid off because the wage bill was too big. After clearing the bill (on 5.12.2012) power was reconnected on 25.12.2016. When the machine was started on 26.12.2012, he saw smoke coming from inside

the house to the outside. The only change to the wiring he saw was the relocation of the meter box from building to the nearby electricity pole.

Under cross-examination, he confessed that he did not know how much tax the company paid.

The Complainant's second witness (CW3), Mr. Moses Abongo, under examination in chief stated as follows:

That he studied in Kibanda Senior Secondary (Kiryandongo District) and went up to S4 in 2004. That he was the machine operator at the Complainant's factory during the period from 2008 to 26.12.2012. That he had worked at the Complainant's factory for 5 years. The machine had worked smoothly, without any problems, all along until that day (26.12.2012) when it stopped. He re-affirmed that the meter relocation was in 2012 then it was moved from the building to an electricity pole. Although the Complainant had refused the relocation, the Respondent's workers convinced him. But he witnessed the relocation for the first two hours and left before it was completed. The power cable was passed through the wall during the relocation exercise.

That on 26.12.2012, when he (CW3) started the machine, he saw smoke coming out of the motor and the isolator. He then called the Complainant to witness the smoke. However, he did not know the extent of the damage.

That he did not know who did the internal wiring.

That from time to time, about once every two months, someone would go and check the wiring in the factory. That he did not know what 'earthing' meant so he could not know whether this was done.

In a written statement, the Respondent on the other hand denied that it was responsible for the burning of the Complainant's motor of his grinding machine and stated as follows:

1. They (the Respondent) received several written complaints (Exhibit CE 3) from the Complainant in regard to a burnt motor of a milling machine that belonged to the Complainant. The Complainant alleged that the cause was an electrical connection that was left loose by the Respondent's technicians during the course of their duties.
2. In order to get to the bottom of the complaint and to resolve it, the Respondent sent various officials, at different times, that included their engineers/technicians and the Gulu District Manager to the Complainant's site so as to gather evidence and advise management on the way forward.
3. The findings and technical conclusions were that (i) the wiring of the electrical installation was poor (ii) the internal wiring of the motor was substandard and in bad condition and (iii) there were no routine maintenance checks done.
4. The Respondent's officials also checked and confirmed that the electrical installation on the side of the Respondent, power supply was sound and without fault.
5. The Respondent concluded from the above site inspections and analyses that the damage to the Complainant's motor was a result of defective electrical wiring of the Complainant's internal installation at his factory

premise. The Respondent was therefore not responsible for the property (milling machine) damage and the income loss that subsequently arose.

The Respondent presented two witnesses and various documents to prove their case:

The first witness, Mr. Tom Awuzu (RW2), stated that he was currently the Respondent's District Manager for Gulu and Kitgum and had been in that position since 14/4/2014. His knowledge of the complaint started on 14/4/2014 when the Complainant went to his office and informed him that the issue of his burnt motor had been long standing. The Complainant believed that since RW2 was a new manager, he would be able to solve the problem. He claimed to have written to the previous District Manager (D/M), Ms. Harriet Mukisa, but at that time he did not have a copy of the letter(s) and since RW2 did not have the handover report from Ms. Mukisa, he could not refer to the complaint. So the Complainant explained the complaint as: **In 2011 the Respondent's staff who went to relocate his energy meter from his premise to the Respondent's electrical pole left a loose connection in the isolator connecting the power to the milling machine. The loose connection caused the burning of the motor of the milling machine.** His (RW2) immediate reaction was that this was not the responsibility of the Respondent but of the Complainant and his technicians. He further explained to the Complainant that the Respondent's responsibility does not go beyond the energy meter. But since the complaint had been brought to him, he would send a technical team to investigate the issue. He soon afterwards sent the team but unfortunately, the Complainant was neither on site nor could the team get access to the inside of the building. Sometime later, the Complainant returned to the office and furiously accused RW2 of having joined those who were delaying his compensation. RW2 promised to visit the site himself together with the technical team. In order to expedite the resolution of the complaint, RW2 went alone to the Complainant's site; that is without the technical team who had gone to attend to an emergency elsewhere. He explained to the Complainant that he, as Manager, wanted to get firsthand information and that he would send a technical team soon afterwards. While inside the building, the Complainant showed him the alleged burnt motor and isolator. As to why it had taken so long to resolve the matter, the Complainant alleged that the previous D/M kept promising him to be patient as the matter was being handled. He, the Complainant, added that when the motor blew in 2012 (possibly in December), he took it for repair since he was a trained electrician. Unfortunately, the repairs failed. As to why he did not wait for the issue to be resolved before attempting to carry out the repairs on his own, he said that it was because of the delays from Respondent's officials. RW2 then promised to send a technical team to investigate after which he would make a report and send it to the Respondent's H/Q for further advice. Indeed RW2 sent there a technical team, which included the Technical Officer (Mr. Ocan Robert, RW3). The team made the inspection, took photographs (of the motor, isolator and premises) to enhance the evidence and reported back to the District Engineer (Mr. F. Baguma) who made a report and gave it to RW2. The report stated that the alleged loose connection was INSIDE the Complainant's building and hence outside the Respondent's scope of

responsibility and the Respondent could not be held responsible for the burning of the motor since this was outside the mandate of the Respondent. RW2 forwarded the report to Respondent's Legal Department for any further action. While a response was being awaited, the Complainant returned to the office of RW2 and requested to know if the Respondent was making any effort to compensate him. RW2 informed the Complainant that he would be informed by an official report. When RW2 received communication from the Respondent's H/Q, he wrote to the Complainant that, basing on the technical report, he was not going to recommend compensation for him. The Complainant was hugely upset when he read the letter and claimed the RW2 had gone to work in Gulu so as to block his compensation. RW2 explained to him that this could not be the case since the problem had been hanging for three year before he (RW2) started working in the Gulu office. Thereafter, the Complainant decided to communicate directly with the Respondent's H/Q.

Under cross-examination by the Complainant, RW2 stated that:

1. He was not aware of the exercise of replacing transformers and transformer poles in 2012 and 2013 respectively since this was before his employment in the Gulu office.
2. He was alone when he visited the Complainant's grinding mill at Ngai Trading Centre.
3. It was on third attempt that he sent a technical team that also took photos and subsequently a report was made.
4. The photos were taken after the Complainant reported the matter to the Respondent's H/Q.
5. Even though the Complainant feels that it is wrong for the Respondent's responsibility to stop at the meter, it was by law, furthermore the cable after the meter belongs to the Complainant.

Upon re-examination, RW2 clarified that:

- (i) He was informed that the motor was burnt on 26.12.2012.
- (ii) He started acting as D/M on 14.4.2014; long after the alleged incidence took place.
- (iii) It was true the case was handled for more than one year prior to his assumption of duties in Gulu.
- (iv) In his opinion there are no exceptions where the Respondent wiring to the consumer's power supply goes beyond the meter.
- (v) Under normal circumstances, matters of the nature of this complaint are forwarded to the Head Quarters. But they would not take so long to resolve. However, in this particular case, they took long but there were no records to show why it had taken so long.

The second witness, Mr. Robert Ocac (RW3), stated that he was currently the Respondent's Technical Officer in Gulu and had been in that position from 2005 to date. He testified that the Complainant's case was brought to his attention by his supervisor, a Mr. Baguma, who was the Maintenance Engineer of the Respondent. Mr. Baguma sent him to the site so as to assess and establish what had happened. When he got to site, he saw the meter box fixed on an outside electricity pole from which a cable emerged and entered the factory through the



wall. The Complainant opened the factory and while inside, RW3 saw a motor lying on a metallic frame and an isolator mounted on a wall. He saw black soot on the middle wire (of the 3-phase supply cable) in the isolator. He also checked the control/starter of the motor whose box was also mounted on the wall. This contained several wires that were not properly aligned; giving an impression of a poor technical job. His technical assessment was that the control system of the starter was faulty because of the misalignment of the wires which could have led to the burning of the motor. However, this was a just a visual observation but nothing was tested to confirm the suspicion. In addition, soot was a sign of burning as a result of failure of the isolator to operate as a protective device. He suggested that discrimination protection should have been used so as to prevent such a problem.

RW3 identified the photos he took during the site visit mentioned above. He identified the supply cable [exhibit RE2(a)], which feeds power up to the isolator, and that it belonged to the Complainant although the Respondent's officials, in conjunction with the Complainant, installed it. He further stated that the misaligned wires in question were after the isolator and were the responsibility of the Complainant as the consumer. The burning in the isolator was on one of the (three) phases, which got overloaded.

When RW3 was cross-examined by the Complainant he stated as follows:

1. It was last year (2016), upon the instructions of Mr. Baguma, that he went and took the referred to photos.
2. It is true that the Respondent's officials relocated the meter and its meter box from the factory wall to a nearby electricity pole. But he did not know when this was done since he was not there.
3. The Complainant was denying that he colluded with the Respondent's technicians to have power connected for him into the isolator.

When RW3 was re-examined he stated as follows:

1. He was not present when the meter was being relocated.
2. In general practice the Respondent does not connect power up to the isolator. But in this particular case the Complainant may have requested the Respondent's officials to do so on a private understanding.

The Complainant responded to No.2 above and said that the Respondent's technicians begged him to break into the wall so as to pass the cable through it [exhibit RE2(b)].

In the final written submission, the Respondent strongly denied responsibility for burning of the Complainant's motor that formed part of the grinding mill. The Respondent contended that

- (i) The Scope of the Respondent's duty was governed by the **Electricity Act** and in particular the **Electricity (Primary Grid Code) Regulations 2003 (Grid Code)**. The relevant part of the Code is Clause 7.1.1, which provides that "the licensee, in this case the Respondent, .....shall provide, install and maintain in a manner which is sensitive to the environment and the amenity of the area, equipment for supply of electricity **up to the point of supply**". In other words, the point of supply being the energy meter, this means that the **internal wiring is**

**the sole responsibility of the Customer/Consumer who is the Complainant herein.**

- (ii) The Doctrine of Vicarious Liability is applicable here. In this case Vicarious Liability is a legal doctrine that, among other relations, makes the employer responsible for a lack of care on the part of the employee in relation to those to whom the employer owes a duty of care-the employee's negligence occurring within the scope of employment: If the Respondent's workers, during the exercise of relocating the energy meter, connected a power cable from the meter to the isolator but left one wire loose (one of the 3 phases) inside the isolator and this subsequently led to the burning of the motor, and therefore the Complainant claims against of the Respondent for these actions of the employees, then it is referred to as vicarious liability. However the vicarious liability would only hold if there existed (i) a master-servant relationship (ii) the acts were done in the scope of employment. But throughout all the evidence given, the Complainant failed to identify the person(s) who carried out the internal wiring. In which case the person(s) could have been either the Respondent's employees, Respondent's contractors/sub-contractors or purely private. Therefore, the master-servant relationship failed to be established. Additionally, in the event that person(s) who carried out the work were employees of the Respondent, they did so outside the scope of their employment because the statutory duty stops at the supply point. Therefore, the Respondent cannot be held responsible for their actions.
- (iii) The Safety of the Consumer's Installations was an issue that could not be overlooked. RW3 inspected and took photos of the electrical installation especially that of the isolator. The poor state of wiring could have led to the malfunctioning of the control gear. Secondly, the motor had been in use for about 20 years (i.e.1993- 2013) and there were no records of routine maintenance. Thirdly, the milling machine had been disconnected from power for about 10 months (because of nonpayment of electricity bills) and its motor got burnt upon re-energizing. Therefore, without any routine maintenance, any problem could have arisen during the 10 months. Fourthly, the Complainant admitted that he was not a qualified electrician and he never sought any professional assessment/analysis of cause of the motor burning. Fifthly and finally, the earth test results (RE1) showed a high value, of 28.6 ohms, and this could have reduced the electrical protection of the motor thus leading to its burning.
- (iv) The inconsistencies in the various documents and oral testimony of the Complainant cast doubt on the credibility of his evidence: In exhibit CE2 the Complainant states that meter relocation was done in March 2012 whereas during his examination in chief he said it was done in 2013.

But during cross-examination, he said that he was present when the meter relocation was being done in November 2012.

- (v) The remedies that were being sought by the Complainant had no ground and should be rejected. The special damage/loss of income had not been proved e.g. by audited books of accounts. Additionally, the Complainant got a loan on 9.3.2013 and defaulted by 25.7.2013 [CE 8-10]. But this time is outside the period of interest because, in his own testimony, the Complainant had been off power for 10 months prior to the incident, which was in December 2012. This means that the power reconnection was in late 2013, precisely about October. Therefore, the Complainant's loan default was earlier than the alleged incident and cannot be entertained herein. The general damages and costs should also not be awarded to the Complainant because the Respondent was not responsible for the damage. The Respondent believes that the Complainant ought to have mitigated his loss.

The Tribunal has put together the evidence (written and verbal) of the two parties as:

The Complainant, Mr. Obua Francis, was self-represented (CW1). He submitted two written witness statements which were received by EDT on 13<sup>th</sup> September 2015 and 12<sup>th</sup> January 2016.

He alleged that in March 2012 (or some time in November 2012), some Respondent's officials went to his factory to relocate his electricity energy meter from the grinding mill factory wall to a nearby electricity pole. While he initially objected to this exercise, because they didn't have any official documents from the Respondent, he eventually agreed and the team did their work. The work involved moving the meter and its box to a nearby electricity pole and connecting the meter to the isolator of the milling machine which was inside the factory. This necessitated making a hole through the factory wall for the cable to pass. The Complainant objected to the team's failure to install a junction box in between the isolator and the meter but the team told him that they didn't have one at that time and if he insisted on it, they would only return after a long time as per their busy schedule.

He alleged that on 5.12. 2012 he went to the Respondent's office (Gulu District) so as to have his electricity supply restored to his premises (milling factory house). The Commercial Officer of the Respondent, one Mr. Dan Mabirizi , agreed to cancel the alleged fraud bill and told the Complainant to pay UGX 400,000 as the outstanding balance so as to reconnect the power supply. The Complainant immediately paid the UGX 400,000 (Exhibit CE 3) and was assured that his power supply would be restored soon afterwards. Some days later, the Complainant met a team of the Respondent who were replacing some electricity poles in Ngai Trading Centre (where his factory is located). He believed that they had also been sent to reconnect his power supply. He negotiated with them to do so but that it should be done on Sunday (23.12.2012). The team did so on the agreed day and phoned to inform him of having done so, while he was still in Church. On 26.12.2012, the Complaint's machine operator, Mr. Moses Abongo (CW3), switched on the milling machine. But moments later, it stopped and he

saw smoke coming out the motor and the isolator was connected to the machine. CW3 immediately called the Complainant who witnessed the smoke coming out of the two places. The Complainant opened the isolator and found that the Yellow Phase (one of the three phases) was loose. He concluded that this was the cause of the motor burning. He recounted that the cable to the isolator had been fixed by the Respondent's team who had relocated the energy meter from the factory house to a nearby electricity pole. He therefore concluded that it was the team who had left the loose connection. In his opinion, as these were employees of the Respondent, then the Respondent was responsible for the damage and the Respondent must fully compensate him for the damage and income loss.

The Complainant immediately contacted the Respondent's District Manager (Gulu), one Ms. Harriet Mukisa, who promised to look into the problem but never did. [We note that the Complainant did not provide any written correspondence(s) either between the Manager or the anyone in the Gulu Office with him]. In that respect the Complainant did not seek any professional diagnosis of the cause of the motor burning but some time later he tried to get the motor repaired but the exercise failed.

The Complainant tried to replace the burnt motor (30HP) with another one (20HP) but it was confiscated by the Centenary Bank over a loan default.

When all his efforts to be helped by the Respondent's officials in Gulu failed, the Complainant sought redress from (1) The Respondent's H/Q in Rwenzori House (Kampala); who sent their engineer ( a Mr. Robert Acac, RW3) to assess the damage and the cause of the problem (2) the Electricity Consumers' Association [CE 6]; who referred him back to the Respondent (3) UAP Insurance Uganda Ltd.; who tried to mediate between him and the Respondent but the Respondent denied responsibility of the accident (4) the Electricity Regulatory Authority (ERA)[ see exhibit CE 7] who also tried to mediate but failed and referred him to EDT.

The Respondent, presented two witnesses; Mr. Tom Awuzu (RW2) and Mr. Robert Ocac (RW3). RW2 is the current District Manager who took over from Ms. Harriet Mukisa; the previous District Manager. RW3 is the current Technical Officer of the Respondent in Gulu. Under instructions from the Respondent's H/Q, RW2 and RW3 visited the Complainant's site, but separately, and on different days, so as to assess the damage and make recommendations to the H/Q. RW2, made a visual assessment and noted that the affected part was inside the Complainant's building and after the meter. RW3 also made visual observations, took photos and measured the earth resistance (RE1 and RE(2)(a)-(d)) as well as suggesting the possible causes of the accident. RW3 made a technical report, gave it to the Gulu District Maintenance Engineer, one Baguma, who passed it on to the D/M (RW2). RW2 made a report and sent it to the H/Q giving a copy to the Complainant. The report recommended that the alleged burning of the motor could not be the responsibility of the Respondent since this occurred after the meter where the Respondent's responsibility stops.

The Respondent made a final written submission and stated as follows:

1. The Scope of the Respondent's duty was governed by the **Electricity Act** and in particular the **Electricity (Primary Grid Code) Regulations 2003**. In brief it

means that the responsibility of the Respondent ends at the point of electricity supply i.e. at the meter. Thereafter, that is beyond the meter, it is the responsibility of the consumer and in this case the Complainant.

2. The Doctrine of Vicarious Liability was not applicable here in that that the Complainant did not provide any evidence of those who carried out the connection of the supply cable into the isolator and hence they could have been people other than the Respondent's employees. But even if they were the Respondent's employees, they acted in their private capacity since the supply cable belonged to the Complainant and they had no instructions to carry out such works and therefore the Respondent could not be held responsible for their actions and liable for the alleged burning of the Complainant's motor.

3. The Safety of the Consumer's Installations needed to have been taken into account as a possible cause of the accident. The installation was done in 1993 and the Complainant did not prove that it was regularly checked. Secondly, the photos taken by RW3 (Exhibit RE2(a)- RE2(d)) show/depict poor wiring. Thirdly, the earth resistance of 28.6 ohms (Exhibit RE1), measured by RW3, was well above the maximum allowed value so as to protect the installation.

4. The Complainant admitted that he was not a qualified electrician and did not seek professional diagnosis of the cause of the motor burning.

5. Finally, the power supply had been off for about 10 months prior to the incidence. Hence without any routine maintenance, anything wrong could have happened during the long spell.

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.

The two issues agreed upon for consideration were:

1. Whether the Respondent was responsible for the alleged burning of the Complainant's motor which was part of his milling machine?
2. Whether the Complainant is entitled to the remedies sought from the Respondent?

We now consider the first issue; i.e. whether the Respondent was responsible for the alleged burning of the said motor.

. It is not in dispute that the Complainant was a lawful consumer of the Respondent's electricity in the name of **Mr. Obua Francis with an Account Number 200198785**. It is also not disputed that he operated a milling machine in Ngai Trading Centre for many years while connected to the Respondent's power supply.

It is also undisputed that sometime in 2012, the Respondent decided to relocate the said meter from the Complainant's building to a nearby electricity pole.

The Respondent did not however provide the details of the works i.e. when and by who carried out the relocation. The Complainant, quite rightly, did not know the names of the team members and unfortunately gave different dates of when the exercise was carried out. We, the Tribunal, believe that the meter relocation required a longer supply cable because of the increased distance from the meter to the isolator. We believe that the Complainant was requested to provide/buy the

mentioned armoured , 4-core underground cable. During his examination in chief, RW3 identified the cable from the photos he took and stated that (i) it belonged to the Complainant and (ii) it was installed in conjunction with the Complainant. In the absence of the cable, the relocation exercise would have been incomplete and would have left the Respondent unconnected to the supply. We agree with RW3 that the connection of the cable at the meter on one end and the isolator on the other end was done by the Respondent's officials and with the knowledge of the Respondent. During the cross-examination of RW3, the Complainant revealed that the relocating team begged him to let them make a hole through the wall so as to pass the cable through it and he accepted.

We note that when the meter was relocated, power was left unconnected at the pole. This was because the Complainant had earlier been disconnected because of unpaid bills. The disconnection is deduced from the Complainant's exhibit CE1; "Consumer Information: 200198785 OBUA FRANCIS".

It shows that in the whole of 2012, the Complainant consumed energy only in one month of January when he had a bill of UGX 254,599.31 recorded on 1.2.2012.

It's indisputable that on 5.12.2012, the Complainant paid UGX 400,000 so as to reduce his outstanding bill [CE1]. But without a Reconnection Order, or any other document, we are not sure whether the Complainant was to be legally reconnected since his unpaid bill simply reduced to UGX 1,637,359.54. The foregoing notwithstanding, the Complainant's power supply was reconnected from the pole on Sunday (23.12.2012) although in his absence. This was clearly a private arrangement, confirmed by the Complainant's own written statement **"The Complainant made it clear that other technicians came on Sunday to reconnect him from the pole..."**.

We also note that the said Sunday was two days before Christmas and unless it was an emergency, there would not have been any normal deployment of workers to reconnect consumers on that day.

We believe that 26.12.2012, which was Boxing Day (the following day after Christmas), the Complainant was eager to resume work after about 11 months. He asked the machine operator to start the mill. There is no evidence that he or his workers first checked the wiring, switches and controls of the mill even after a long period of 11 months of disuse. We would like to believe that it is true that the motor stopped working soon afterwards and smoke came out of the isolator and motor as stated by the Complainant.

Unfortunately, without a qualified/professional diagnosis of a certified electrician, we cannot pinpoint to the cause. The Complainant neither sought the services of a professional electrician nor asked the Respondent's officials to go and carry out an investigation.

It is therefore conclusive that (1) the accident of the alleged burning of the Complainant's motor was caused on the side of the Complainant's wiring; most likely between the isolator and the motor i.e. a fault in the switchgear, wiring or the motor itself. (2) The Respondent's officials/workers , though participated in the installation of the cable, may or may not have left a loose connection that could have been the cause of the accident. (3) That the Respondent's officials/workers acted in a private arrangement to assist the Complainant install

the cable and in particular connect it to the isolator. We therefore agree with the Respondent's submission that (1) the **Electricity (Primary Grid Code) Regulations Number 2003** exonerates them on any accident beyond the point of supply (2) the Respondent's workers, acted in their private capacity and hence the Respondent cannot be held responsible for their actions. We are also of the considered view that the accident could have been avoided had the Complainant taken the precaution of checking his electrical installation prior to starting his mill especially since it had been off power for about 11 months and more so as the wiring had been worked on as the cable was being installed.

Let's now consider whether the Complainant is entitled to the remedies sought from the Respondent, The following are the remedies the Complainant sought:

The Complainant was seeking compensation, from the Respondent, arising out of the first issue: that his motor got burnt because of the Respondent's workers actions. Secondary, ever since his motor allegedly got burnt, he has been unable to operate his milling machine hence has lost a lot of business. Thirdly, that his second motor was confiscated by the Centenary Bank while he was attempting to revive his business. The Respondent should therefore pay for as well as the confiscated motor projected income from it. Naturally, he wanted the Respondent to pay for all the costs related to the suit i.e. transport, food and accommodation. He itemized the losses to be (i) Loss of two motors; UGX 10,500,000 (ii) Loss of business from December 2012 to 2015; UGX 95,770,000 (iii) Transport, food and accommodation while pursuing the suit; UGX 1,665,000. The total request amounted to UGX 107,935,000.

The Tribunal will not concern itself with the quantum but the principle. Having stated that the Respondent cannot be held responsible for the burning of the motor, then the Respondent cannot be held responsible for the consequences either.

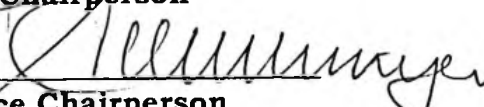
The Tribunal notes with sadness that the Complainant's business has been inoperable since December 2012. But nonetheless having failed to convince the Tribunal that the Respondent was responsible for actions and/or inactions for the fire at the grinding mill; the Respondent cannot be held responsible for the losses that the Complainant has allegedly suffered. The Tribunal declines to award any of the remedies sought by the Complainant.

In conclusion, we realize that both parties have spent resources in pursuit of justice. We order that each party meets own costs.

So we order.

Dated at Kampala this 29th day of August 2017

  
\_\_\_\_\_  
**Chairperson**

  
\_\_\_\_\_  
**Vice Chairperson**

Mmusanzi  
\_\_\_\_\_  
**Member**