

THE REPUBLIC OF UGANDA
THE ELECTRICITY DISPUTES TRIBUNAL
MISCELLANEOUS APPLICATION NO.007 OF 2019 (Arising out of
Complaint No.021 of 2019)

ELEMENTAL ENERGY LTD..... APPLICANT/COMPLAINANT
AND
ELECTRICITY REGULATORY AUTHORITY.....RESPONDENT

RULING IN RESPECT OF AN APPLICATION FOR A TEMPORARY
INJUNCTION

M/S A.F. Mpanga Advocates, representing Elemental Energy Ltd, the Applicant filed an application by way of Chamber summons for a Temporary Injunction to issue against the Electricity Regulatory Authority, the Respondent “*to restrain the Respondent, its officers, servants, agents representatives or any person from implementing, enforcing, relying, or furtherance of the decisions/ findings in the Notice of Authority Decision in Respect of Compliance by Elemental Energy Limited dated 18th day of July 2019 and the Notice to Elemental Energy Uganda Limited to show Cause why Licence No.ERA/LIC/GEN/016/146 should not be revoked until the final determination of Complaint No.EDT 021 of 2019: Elemental Energy Limited versus Electricity Regulatory Authority*”, and that costs of this Application be provided for. The application was supported by the affidavit dated 27/08/2019 of Shona Gloria Musanase who described herself as a Director of the Applicant/Complainant and made the affidavit in that capacity and on behalf of the Applicant/Complainant.

The Applicant put forward a number of grounds to support its application for a Temporary Injunction to issue as stated above.

It among others stated that:

- It had filed Complaint EDT No.021 of 2019 before the tribunal challenging a Notice of Compliance and Notice to show cause, issued by the Respondent to the Application as having been issued wrongfully, unlawfully, illegally and in total breach of the express provisions of the Electricity Act, Cap 145.
- That at all material times until its transfer, the Applicant/Complainant is/was the holder of a Licence No. ERA/LIC/GEN/016/146 “(the Licence)” issued on 7th October 2016.
- That the Respondent had on 18th July 2019 issued the Applicant/Complainant with a Notice of the Respondent’s decision in respect of Compliance by the Complainant in which notice the Respondent reportedly found with finality that the Complainant was unlikely to fulfil its obligations under the Licence. The Applicant/Complainant argued that the Respondent did this without complying with the express provisions of the Electricity Act, Cap 145 and outlined therein a number of instances where it alleged the Respondent did not comply with the said Act and that the said Notice of Compliance was executed in total disregard and or abuse of the provisions of the said Electricity Act. The Applicant further stated that the Notice of Compliance contained a Notice to show Cause why the Licence should not be revoked. The Applicant’s stand was that the contents of these two Notices posed an imminent threat to revoke the Licence, albeit unlawfully and illegally.
- The Applicant submitted that unless the Respondent is restrained from implementing and or enforcing the decisions/findings contained in the Notice of Compliance and Notice to show Cause referred to above, the Applicant would irreparably be affected and its business operations

gravely interfered with and or permanently stopped to the Applicant's detriment, and that the Licence was at the date of hearing of this Application still force.

- The Applicant also submitted that the balance of convenience favoured it because it stood to lose if the decisions/findings contained in the disputed Notice of Compliance were to be implemented and or enforced before Complaint **EDT No.021/2019** is determined, otherwise the finality of the tribunal's decision might be rendered nugatory.
- The Applicant also submitted that it is just and equitable that the Application for temporary Injunction be granted pending the final determination and disposal of the **Complaint EDT 021/2019**.

We think that, in summary the Application for the temporary Injunction is grounded on the Applicant's wish to preserve their right to challenge the decisions of the Respondent to issue the respective Notice of Compliance and Notice to show Cause, both issued on 18th July 2019, which in the Applicant's opinion could imminently lead to the Cancellation of Licence No. ERA/LIC/GEN/016/146 before final determination of their **Complaint EDT 021 /2019**, which challenges the legality of the Respondent's decisions in issuing the said two Notices, and the legality of the two Notices. They are also of the view that in the process of determining Complaint EDT NO. 021/2019, a number of pertinent issues touching on the proprietary rights and interests to the said Licence and the legality of the conduct of the Respondent will come in issue and ought to be determined in a hearing, otherwise the final orders of the tribunal could easily be nugatory.

On its part, the Electricity Regulatory Authority represented by M/S Byamugisha & Co. Advocates, contended that the Complaint EDT NO.021/2019 underlying the Application for a temporary Injunction was misconceived, bad in law and consequently the Application for a temporary Injunction was equally misconceived, and bad in law. In an affidavit in reply

sworn by its manager, Legal service, Mr Steven Mwandha dated 11th October 2019, the Respondent contended that it had throughout acted properly, transparently, objectively and in accordance with the Electricity Act, as far as the Applicant and its Licence are concerned and that all the allegations in support of the Application were deliberate falsehoods.

The Respondent submitted that it be left free to carry out its regulatory function, as far as the Licence in question was concerned. It prayed that the Application be dismissed with costs.

We have reviewed the pleadings in this Application, supporting affidavits, attachments thereto, and the oral submissions made by Counsel for both parties and the case law, to which our attentions was drawn.

We are alive to what the High Court in **Kiyemba- Kaggwa Versus Katende Civil Suit No. 2019 of 1984 reported in [1985] HCB43**, stated that; *“the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve matters in status quo until the questions to be investigated in the suit can finally be disposed of”*. Court further stated that; *“the conditions for the grant of an interlocutory injunction are First that, the Applicant must show a prima facie case with a probability of success”*

Secondly that *the Applicant would if the injunction is not granted suffer irreparable injury which would not adequately be compensated by an award of damages.*

Thirdly that *“If the Court is in doubt, it will decide an application on the balance of Convenience”*.

We are also alive to the statement of the Court of Appeal of Uganda in **Godfrey Sekitoleko and 4 others versus Seezi Peter Mutabazi and 2 others. Civil Appeal No. 65 of 2001** stating that *“the Court has a duty to protect the interest of parties pending the disposal of the substantive suit. The subject matter of a temporary injunction is the protection of legal rights pending litigation. In exercising its jurisdiction to protect legal rights to property from irreparable or serious damages*

pending the trial the Court does not determine the legal rights to property but merely preserves it in its actual condition until the legal title or ownership can be established or declared”.

We agree that a suit by way of Complaint No.EDT 021/2019 against the Electricity Regulatory Authority (the Respondent) was filed by the Applicant on 27/08/19 challenging the Notice Compliance and Notice to show cause issued to the Applicant as having been issued wrongfully, unlawfully illegally, and allegedly in total breach of the provisions of the electricity Act. Cap 145.

The Applicants contended that consequent to the said notices, there is an imminent threat from the Respondent to wrongfully revoke Licence No ERA/LIC/GEN/016/146 which is the subject matter of the two Notices referred to above.

The tribunal is convinced that this Application for a temporary injunction falls within the parameters and spirit spelt out in the case law referred to above. We believe that there are triable issues relating to legality of the conduct of the parties, the notices issued, and the ownership of the Licence among others, all which have the potential of influencing the final determination of EDT 021/2019.

In our opinion it is a case that justifies issuance of the temporary injunction so as to preserve the rights of the Applicant to challenge the decisions and conduct of the Respondent.

We also believe that if we decline to grant this order of temporary injunction, the final orders of the tribunal could easily be nugatory, and the Applicant could also suffer irreparable injury which may not be adequately compensated for by an award of damages. We are additionally of the opinion that the balance of convenience is in granting this Application.

Accordingly, "A Temporary Injunction does issue restraining the Respondent, its officers, servants, agents, representatives or any person from implementing, enforcing, relying or furtherance of the decisions/findings in the Notice of Authority Decision in respect of Compliance by Elemental Energy Uganda Limited dated the 18th day of July 2019 and the Notice to Elemental Energy Uganda Limited to Show Cause why Licence No.ERA/LIC/GEN/016/146 should not be revoked until final determination of Complaint No.EDT/021 / 2019: Elementary Energy Limited versus Electricity Regulatory Authority and any similar dispute before this tribunal between these two parties litigating under the same title in which the issue/s raised are substantially the same as those in Complaint EDT No.021/2019". We so order.

Each party is to meet its costs.

Dated at Kampala this.....^{26th}..... day of.....^{November}~~December~~.....2019

CHARLES OKOTH-OWOR

.....
Chairperson

ANACLET TURYAKIRA

.....
Vice Chairperson

ENG.PAUL MUBIRU

.....
Member