

THE REPUBLIC OF UGANDA

THE ELECTRICITY DISPUTES TRIBUNAL

**COMPLAINT EDT No. 10 OF 2014
AT AMBER HOUSE, KAMPALA**

HABIB SEMBATYA _____ **COMPLAINANT**

VERSUS

UMEME LTD _____ **RESPONDENT**

CORAM

- Charles Okoth – Owor - Chairman
- Anaclet Turyakira - Vice Chairman
- Eng. Dr. Moses Musaazi - Member

Complainant’s Counsel - M/s Odekel Opolot & Co. Advocates

Respondent’s Counsel - Shonubi Musoke & Co. Advocates

Clerk - Michael Sanya

JUDGMENT

BACKGROUND:

This Complaint was brought by **Sembatya Habib**, the Complainant and Witness “CW1”; initially through Najib Mujuzi Advocates. M/s Odokel Opolot & Co. Advocates subsequently took over conduct of the matter.

The Respondent, UMEME Ltd was represented by Counsel Priscilla Namusikwe from Shonubi, Musoke & Co. Advocates. Mr. Sembatya sought remedies against UMEME Ltd for alleged trespass upon his land. However as per the contents of the Joint Scheduling Memorandum, both parties agreed that the alleged trespass by the Respondent upon Sembatya’s property was not existing at the time of filing the joint memorandum.

The Complainant’s case was that on October 4th, 2013 or thereabouts, the Respondent Company through its agents trespassed upon his land by

connecting electric wires over his house to his neighbor, a one Mutesasira and thereby also exposed him and his entire family to the danger of electric shocks and or electrocution. The Respondent allegedly also cut down his Mango tree. It was the Complainant's case that he did write a letter dated 10th October 2013 to the Respondent's Manager at Najjanankumbi branch, to complain of these actions which he perceived as illegalities committed by the Respondent or agents. He testified that the Respondent's Manager sent to the ground an engineer to ascertain the facts of his complaint. The said Engineer, one Nsamba confirmed the status as reported by the Complainant. It was also the Complainant's case that the said manager promised to take up and rectify the matter. It was also his case that the Respondent did nothing to rectify the situation until 10th March 2014, when the Respondent shifted the wires. He argued that as a result of the overhead wires above his residence; he and his family had suffered psychological torture resulting from living in fear of the danger of electric shocks.

The Complainant originally claimed against the Respondent, compensation of Ug Shs 20,000,000/= (Twenty million only) for trespass to his land, damage to his mango tree, an order for permanent discontinuation of the trespass to his residential land, General damages, interest at 25% from the date of filing the matter until payment in full and costs of the complaint at Ug Shs 2,000,000/= (Two million only).

On the other hand, it was the Respondent's case that through its agents and officers, it carried out its duties in a lawful and professional manner with due regard to the generally accepted standard rules of safety. It was also the Respondent's case that all the electric wires were installed for purposes of providing electricity to the customers, the Complainant inclusive and, were in safe areas that are a standard distance away from the customer's houses to prevent any exposure to electric shock. In its pleadings it averred that all electricity wires that are installed over customer's property are installed with the consent and knowledge of the property owners. It denied any act of trespass unto the Complainant's premises, to connect electric wires over his house. It also averred that there was no exposure of the Complainant's family to electric shock and that there was never any apprehension or psychological torture caused to or suffered by the Complainant or his family members. Lastly it averred that there was no danger to the Complainant or trespass at the date of filing the complaint, i.e. 02nd April 2014.

In reply to the Respondent's written submission, the Complainant re-affirmed his earlier averments, but added that later on, in April 2014, the Respondents removed the illegally connected wires from the suit land and thus effectively stopped the trespass.

The parties in the joint scheduling memorandum agreed that there was no trespass by the Respondent on the Complainant's property. Presumably this was from the time the wires were reportedly shifted, although the date of removal of the wires from the Complainant's house is not agreed. The Complaint deemed the alleged removal as an admission of earlier trespass.

ISSUES

The following were agreed upon as issues in respect of which the parties sought the Tribunal's decision:-

- 1. Whether there was trespass on the Complainant's land?**
- 2. Whether the Complainant is entitled to the remedies prayed for?**

At the commencement of the proceedings in this matter; the parties made an effort to resolve the dispute between themselves and, to that end sought and were granted several adjournments to facilitate discussions with a view to reaching an out of Court settlement. We must state that this matter also suffered numerous adjournments, due among many reasons; the absences of Counsel on various times, withdrawal of the Complainant's Counsel at some stage in the hearing and repeated requests for yet another opportunity to try to settle the dispute amicably between the parties and the need to procure an interpreter at some stage in the proceedings.

On the 4th June 2015, both parties finally admitted to a failure to agree on the quantum of compensation and requested that the complaint be decided by the tribunal.

At the hearing that commenced on 29th September 2015, the Complainant testified that he was a resident of Bulonde Village, Bweya Parish, Sissa Subcounty, Wakiso District.

He reiterated his claim as to the Respondent's personnel coming to his land, cutting his mango tree and passing electric wires over his house to connect his neighbor, one Mutesasira to electricity supply. He testified that he never signed any way leaves to permit the Respondent to pass the wires over his land or house. He testified that he wrote and on 10th October 2013 took a letter of complaint to one Eng. Nsamba, an employee of the Respondent whom he claimed was at the time, the overall in charge of surveying the area where the electricity lines were to pass.

He claimed that Eng. Nsamba visited the site after which he invited him to his office where he reportedly confirmed to the Complainant that there was no permission or consent on the Respondent's file, from the Complainant to the Respondent to pass wires over his property. Eng. Nsamba reportedly apologized for the failure to seek or obtain permission to pass electricity wires over the Complainant's residence. He testified that Eng. Nsamba advised him to see Mr. Mutesasira so that the latter can compensate him, but that he never wanted to see Mutesasira. He further testified that even when his neighbor, Mr. Mutesasira invited him two (2) days later to discuss possible amounts of compensation; he never responded. He reasoned that the wires were for the Respondent and that neither was Mutesasira a party to the people who cut his mango tree. In cross examination, he conceded that the Respondent's personnel cut about 5 branches off the mango tree, and did not cut down the whole tree. He tendered as Exhibits "CE (i), (ii) and (iii)", "photographs in an effort to prove the fact of his mango tree having been cut allegedly by the Respondent's employees or agents.

Mr. Sembatya further testified that the Respondent's personnel under the supervision of one Ssegirinya came on 10th March 2014 and changed the electric wires from their previous position over his land, to a position outside his land. He claimed that this was done after he had complained to the tribunal, otherwise the wires were still over his land by the time he filed a complaint to the Tribunal. He sought compensation for his mango tree whose branches were cut off, then trespass, mental torture and costs of the suit.

In cross examination, he admitted that he was connected to electricity from the same pole that Mutesasira draws power from but which he claimed was previously existing and located at the boundary of his land.

The tribunal also admitted as Complainant's exhibits; "CE (iv) and (v)" respectively the Complainant's letters dated 10th October 2013 to the Respondent's manager at Najjanankumbi and one dated 04th March 2014 from his previous Lawyers, Najib Mujuzi Advocates to the Respondent's head office at Rwenzori, Courts.

Although he testified that his complaint was filed at the tribunal on a date he could not recall but believed that it was before the wires were moved; it was put to him that his Complaint was actually filed at the tribunal on 02nd April 2014; while the wires, by his earlier testimony were removed on 10th March 2014.

He reiterated that Mr. Mutesasira, his neighbor offered to pay him for the mango tree branches that were cut and for the wires to remain over his plot,

but that he rejected the offer of payment and did not even find out what the offer might be. He affirmed that he was before the tribunal to seek compensation for the mango tree and trespass upon his land. There was no re-examination of the Complainant.

On the 09th February 2016 the Complainant ("CW1") presented his other witness, one Kawooya Ronald ("CW2"). CW2 testified that he is Ag. Secretary of Defence in Kanyigo – Bulonde L.C1 Village, located at Kajjansi, Wakiso District and that this is the same village in which the Complainant lives. He testified that he knew the Complainant as a resident of Bulonde village and Mutesasira as owner of a house on the same village, although not resident there and that on a date in October 2013 he was asked to go to the Complainant's residence and establish what was taking place there, by a one Mr. Bbossa, the L.C.1 Secretary of the Local Council. He testified that he found that the Complainant's Mango tree had been cut and that 5 men putting on overalls with the name "UMEME" were at the location of the Mango tree. After an unhelpful interaction with the said men during which they told him that the matters he was inquiring about were above him; he went away and informed the said Bbossa, L.C.1 Secretary that the Complainant's mango tree had been cut. He stated that the tree was cut so as to enable wires to be passed where the branches were. He could not recall the exact date when this took place save that it was in October 2013. Finally, he testified that about 5 months later, the electricity wires that were passing over CW1's house to Mutesasira's house were changed away from over the house of the Complainant.

Consideration of this matter was thereafter adjourned to 5th May 2016 when one of the Counsels who had personal conduct of this matter would return from maternity leave.

The matter thereafter dragged on for sometime with requests from the Respondent for further adjournments to enable it procure the presence of its witnesses. On 29/08/2016, at the application of the Complainant's Counsel; the tribunal ordered the Respondent to close its case pursuant to Regulation 20(a) (b) of the Electricity Disputes Tribunal (procedure) Rules, 2012, and the parties to submit their written submissions. The Respondent had repeatedly failed to procure its intended witnesses to testify before the tribunal. The Respondents therefore proffered no witnesses. Judgment was to be given thereafter on notice.

The Tribunal has subsequently carefully considered the cases of the Parties including the pleadings, Joint Scheduling Memorandum, the testimonies of the witnesses, exhibits and, the parties' respective written submissions in relation to the two (2) issues agreed upon.

The first issue to be decided upon is **whether there was trespass unto the complainant's land.** It was the testimony of the Complainant's (CW1) and that of his witness Kawooya Ronald "CW2"s that "CW1" was a resident of Bulonde Village in Wakiso District and a neighbor to one Mutesasira. It was also the Complainant's case that the Respondent Company on or about 4th October 2013 trespassed unto his residential premises by connecting electric wires over his said residential premises and very close to the roof of the house. The Respondent also cut his mango tree in order to connect these wires to the said Mutesasira house. It was his case that this was done without his consent or permission. He also claimed that the act of connecting electric wires over his residence exposed him and his family to the danger of electric shocks, which resulted in him and his family suffering from psychological apprehension and torture, due to fear of danger from the overhead wires.

On our part, we surmise that the Complainant is complaining of the tort of trespass to land and damage to his mango tree. We understand the tort of trespass to land to consist of ; entering upon the land in possession of the Complainant; or remaining upon such land; or placing or projecting any object on it or over it and in each case without the consent/permission/licensee/leave of the Complainant or lawful justification. Counsel for both parties referred to decided cases which confirmed our above understanding of the tort of trespass to land.

Counsel for the Complainant referred us to **SAWUYA NAKATE Vs ALOOYZIO KAMENYERO (1976) HCB 14** wherein Court held that:

"Any interference with another person's property without any lawful or statutory sanction would clearly amount to an encroachment of the rights of a person to possess and enjoy peacefully his property and would be trespass"

Counsel for the Respondent on her part quoted **JUSTINE. E.M.N LUTAYA Vs STIRLING CIVIL ENGINEERING COMPANY LTD SUPREME COURT CIVIL Appeal No. 11 of 2002** which held that: *Trespass to land occurs when a person makes an authorized entry upon land and thereby interferes, or portends to interfere, with another person's lawful possession of that land.* These two cases sum up our understanding of the tort of trespass to land.

It is also our understanding that to maintain an action for trespass; the Complainant must be in possession or have a present right to possession of the land in issue.

The Complainant:- CW1 and his witness, Ronald Kawoya – CW2 testified that CW1 was a resident of Bulonde Village with a residence thereat of which the Complainant was in possession and occupation. The Respondent did not dispute this assertion and indeed implicitly accepted it, save in its submissions where it sought to raise the issue for the first time; arguing that the Complainant never took steps to prove his possession and thus the Respondent cannot be faulted for trespass in the circumstances.

On our part, we noted that during the hearing of testimonies on this matter, the Complainant's possession and occupation of the residential premises at Bulonde was asserted by the Complainant and his witness CW2. It was never seriously challenged or disputed by the Respondent. We have consequently deemed it as a fact that the Complainant was in lawful possession and occupation of the residential property/house at Bulonde Village as he and CW2 testified.

It was denied in general by the Respondent that any act of trespass occurred unto the Complainant's premises.

The Respondent in its brief facts of the case stated that through its agents and officers, it carried out its duties, and contended that it did so in a lawful and professional manner with due regard to the generally accepted standard rules of safety. It further admitted that the electric wires were installed for purposes of providing electricity to the customers (the Complainant inclusive) and were installed in safe areas that are a standard distance away from the customers' houses to prevent any exposure to electric shock.

The tribunal notes that the Respondent however does not dispute the specific allegation as such of its passing wires over the Complainant's residence to a neighbor and it only claims that it did so in a lawful and professional manner and that this included also providing the Complainant with electricity. On other hand, the Complainant testified that the act of passing wires over his house to connect the neighbor was done without his consent or permission. He testified that he complained of this fact to the Respondent's area Manager at Najjanankumbi branch. In the tribunal's view, the fact that the complainant received power from the same pole from which wires passed over his house to supply another person does not necessarily absolve one from trespass if there was no permission/consent/licensee of the person in possession of the house over which the wires are passed or projected.

The Respondent did not deny the averment that it did not obtain permission of the complainant before passing electric wires over his house so as to supply the neighbor. It did not show any evidence of written permission or consent to

project electricity wires over the complainant's said residence at Bulonde village. It also did not dispute the testimony of the complainant that the area Manager apologized to him, allegedly stating that when he looked through its own file, he did not find any signed way-leave, authorizing the Respondent to pass wires over the complainant's house to the neighbor.

The Respondent admitted that its personnel later came and changed the pole and wires from their original position; only arguing that by that fact there was consequently no trespass.

From the description of trespass given by the two Courts cases quoted herein before; we have already surmised that trespass is a wrongful entry unto the land in possession of another. It is also our understanding that trespass to land does not mean just trespass to the surface of the land, it also includes trespass in the air space above land, although it may be asked how far does this area of air space extend above the surface.

The case of **Kalson Vs Imperial Tobacco Co. Ltd, 1957 Q.B 334** provides some guidance on this point. The facts were that the defendants erected an advertising sign on a building and the sign projected into the air space above the shop of the plaintiff. The Court decided that this was trespass. In the complaint before the tribunal, none of the parties told us how high the wires were placed above the residence and for the Respondent what constitutes standard distance away from the customer's house to prevent any exposure to electric shock; Neither were we informed at what distance these wires were actually placed from the Complainant's residence; so as to fall within what the Respondent termed as "Standard distance". We expected this guidance from the parties and particularly from the Respondent, which is a technical body and also averred "Standard distance".

Given the above testimonies; we have not found it difficult on the balance of probability to agree with the Complainant that the Respondent acting by its personnel or agents trespassed upon land in possession and actual occupation of the complainant, Habib Sembatya CW1 at Bulonde Village, Sisa Subcounty Wakiso District by projecting electricity wires over his house and that this took place on or about the 4th October 2013.

The above conclusions are reinforced by the fact that the Respondent did by its own admission on 10th March 2014 actually remove the wires which had allegedly been placed above the Complainant's house after "CW1" Habib Sembatya, the Complainant had complained to the Respondent's area Manager of the trespass.

It is true that the Complainant declined any possible compensation from the neighbor who had been connected by the wires passing over the Complainant's house. This may affect the amount of damages, if any to be paid by the Respondent for the trespass, but does not remove the fact of trespass; just much as the fact that the wires were transferred in March or April 2014 extinguish the fact that the wires were on 4th October 2013 initially passed over the Occupant's house without any consent/permission or licensee of the Complainant who was in possession and occupation of the same and in any case only removed in March or April 2014 after much complaint. It must also be remembered that in any case the neighbor only desired to pay the Complainant so that wires continue to pass over the Complainant's house. Our understanding of this scenario is that the Complainant was not ready to allow electric wires to pass over his house, more so when it is borne in mind that he testified that he and his family lived in apprehension of electric shocks as a result of the said wires passing over his house.

We also found it believable that the Respondent acting by its personnel or agents damaged the complainant's mango tree by cutting off some branches. It was Ronald Kawooya's testimony ("CW2") that he found 5 men in Umeme overalls at the location of the electricity pole and the complainant's mango tree, having had some of its branches cut by these five (5) men. The men allegedly told him that the matter as to what they were doing there, were beyond him, "CW2". The Respondent did not deny that the five (5) men CW2, (Kawooya) found at the spot where the mango tree had been cut were its personnel or its agents. Counsel for Respondent however managed to elicit from "CW2" was that; it was branches and not the whole tree that was cut down.

The argument of failure to mitigate on the part of the Complainant is in the circumstances not sustainable; likewise, the fact that only branches were cut off the mango tree and not that the whole tree was cut down, does it constitute a major contradiction to warrant rejection of all the complainant's testimony or in respect of the damage to the tree. The original claim that the whole tree was cut down was obviously an exaggeration by an excited litigant who imagined, he could get away with an exaggeration! This may affect the amount of damages awarded, if any, but does not go to the core of the Complaint.

Finally, we conclude that the Respondent trespassed upon land in possession of the Complainant in that it placed wires over his house in order to connect a neighbor and, this was without his consent, permission leave or licensee. We also concluded that the Respondent cut off some branches from a mango tree that the Complainant claimed to own. Ownership of the mango tree was never in dispute in any case. We also believe that the Complainant and family

suffered fear and apprehension from the possibility of electric shocks from the overhead wires.

The next issue is; **whether the Complainant is entitled to the remedies prayed for;**

The Complainant prayed for General damages, interest at 25% from the date of filing until payment in full and costs of this suit; arising from what he alleged was trespass upon his land and the cutting down of his mango tree from which he allegedly was to earn an income for quite a number of years. We as the tribunal have already found that there was trespass by the Respondent upon the Complainant's land. We also found that some branches were cut off from his mango tree and that not the whole tree was cut down. The Complainant seeks general damages. **Damages** are a form of remedy and according to **Black's Law Dictionary** are *the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong*" This also well summed up by the holding in **David Tyamulyeme V. Att. Gen CA 81 of 2006** which the Complainant's Counsel quoted in his submissions as follows *"the general rule with regard to the award of general damages is that a person who has been wronged is entitled to be compensated for the injury suffered"*

According to the same dictionary *general damages* are Damages that the law presumes follow from the wrong complained of; They do not need to be specifically claimed thus need not be set out in the Plaintiff's (Complainant's) pleadings.

The Complainant is in the circumstances above entitled to damages for trespass by the Respondent over his land and damage to his mango tree. The determination of the value of general damages is subjective and it can be difficult to fix the amount with certainty. We nevertheless believe that the foregoing statement not being prejudiced; the measure of general damages ought to be real and tangible. In the circumstances; our assessment of the amount of general damages to award in this case, we are guided by our general experience and knowledge of the general economic and social state of affairs in the country, Uganda.

Although the Complainant sought to be awarded general damages of UShs 30,000,000/= (Thirty million) we are convinced that this amount is exaggerated, considering the general economic and state of affairs in Uganda today. The Complainant was in June 2015 even willing to settle for UShs 3,500,000/= (Three million five hundred thousand) including legal fees; *(we refer to a letter 02/06/2015 from the Complainant to the Respondent's Lawyers*

and copied to the Tribunal). Specific future incomes lost from the branches that were cut and which the complainant belatedly claimed was never pleaded.

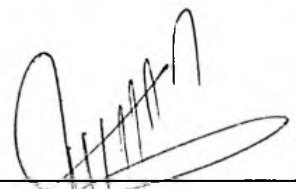
We also think that such income is only a speculation; the complainant not having shown us how much he was earning before and what amount he now stood to lose, with some branches cut off.

The tribunal awards to the Complainant the amount of US\$ 10,000,000/= (Ten million only) as general damages for the trespass suffered, mental apprehension suffered as a result of the fear of the danger of electric shocks from the overhead wires and, damage to his mango tree; to attract interest of 24% P.A until payment in full. Costs of this complaint are awarded to the Complainant.

We have so ordered this 13th day of March 2017

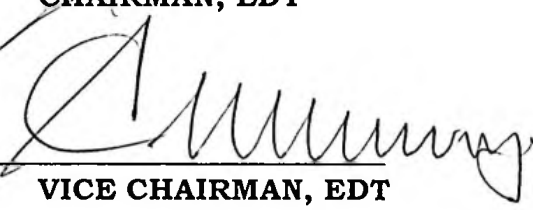
Signed by

CHARLES OKOTH -OWOR



CHAIRMAN, EDT

ANACLET TURYAKIRA



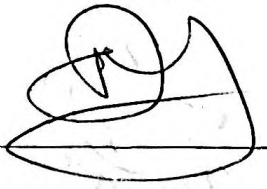
VICE CHAIRMAN, EDT

ENG. Dr. M. MUSAAZI



MEMBER, EDT

SEALED BY THE REGISTRAR, EDT



REGISTRAR, EDT