

**THE REPUBLIC OF UGANDA
THE ELECTRICITY DISPUTES TRIBUNAL
IN THE MATTER OF EDT COMPLAINT NO.13 OF 2017
BETWEEN
MUTENYE MOSESCOMPLAINANT
AND
UMEME LIMITED.....RESPONDENT**

TRIBUNAL CORAM:

CHARLES OKOTH – OWOR	-	CHAIRMAN
ANACLET TURyakIRA	-	VICE CHAIRMAN
DR. ENG. MOSES MUSAAZI	-	MEMBER

RULING

The issue that necessitated this ruling was whether the Complaint **EDT 13 of 2017** was properly and lawfully before the Electricity Disputes Tribunal, given that the cause of action is death. Counsel Samuel Eyotre from Tumwebaze, Atugonza, Kobusingye Advocates & Legal Consultants represented the Complainant. Complainant is a brother of one Wanzala Sam, now deceased, who was allegedly electrocuted on getting in contact with an electricity wire.

UMEME Limited, the Respondent is a concessionaire Company in the electricity distribution and supply business, which maintains and operates the electricity distribution network in Uganda; Counsel Bonnie Ngabire represented the Respondent. The Complainant filed Complaint **EDT 13 of 2017** in the Electricity Disputes Tribunal against the Respondent. The Complainant claims that his brother died as a result of acts and omissions of negligence on the part of the Respondent. After hearing had commenced and the Complainant had been examined in chief, cross examined and re- examined; Counsel for the Respondent raised an objection to the continuance of the proceedings.

She submitted that **EDT No. 13 of 2017** was improperly instituted before the Tribunal; the reason being that death is the cause of action and this matter should have strictly been brought under the **Law Reform (Miscellaneous Provision Act) Cap 79**; particularly **Sections 5 and 6** thereof and is triable by the High Court, which has inherent jurisdiction in all matters. She argued that while it is not disputed that the Complainant is a family member of the deceased, yet instituting this action by ordinary suit makes him a third Party because he is not the aggrieved person. She argued that this was the spirit under which the Law Reform (Miscellaneous Provisions) Act Cap 79 Laws of Uganda was enacted; to enable a third Party to bring a claim on behalf of the deceased.

She elucidated that Section 5 of the said Act states among itself that "*if death had not ensued, the deceased would have had a cause of action*". She concluded that the matter was improperly before the Tribunal as it ought to have been brought under the Law Reform (Miscellaneous Provisions) Act, because death occurred and it was not an ordinary matter, in any case within the electricity sector to be tried by the Tribunal. She therefore prayed that the Tribunal dismisses this suit on the grounds that it is an irregularity under the law and was improperly instituted by the Claimant, or Complainant. She also prayed for costs of the suit.

On the other hand, Counsel Eyotre submitted that the Tribunal is vested with the power and Jurisdiction to handle this matter. He referred the Tribunal to **Section 109(1)** of; **The Electricity Act 1999**, which States that "*the tribunal shall have the Jurisdiction to hear and determine all matters referred to it relating to the electricity Sector,*" for its Jurisdiction.

He argued that **Section 109(1)** of the said Act does not define the activities deemed to be within the scope of the electricity Sector but that however, the short title to the said Electricity Act does spell out the object of the Act and guides on the activities that fall within the Sector and in that respects provides among others that it is "*to provide for the distribution and use of electricity; to provide for plant and equipment and for matters relating to safety*".

He argued that because the deceased died as a result of electrocution, allegedly caused by the negligence of the Respondent, the Complaint falls squarely under breach of the duty on the part of the Respondent to ensure safety in its distribution activities and it is a matter provided for by the Act.

Secondly, he argued that the Electricity Act does not specifically exempt the Tribunal from handling Complaints of the type that the Complainant had brought before the Tribunal; that is, death as a cause of action. **Section 109(2)** of the said Act, he said provides for specific exemptions to the jurisdiction of the Tribunal. **Section 109(2)** reads: "*For the avoidance of doubts, the Jurisdiction of the tribunal does not include the trial of any criminal offence or the hearing of any dispute that licensee and any other Party may have agreed to settle in accordance with their agreement*". He could not read any provision in **section 109(2)** of Electricity Act that expressly excluded death as a cause of action, before the Tribunal. He submitted that in the absence of such provision, the Tribunal is vested with Jurisdiction to determine matters where death is a cause of action and, especially in an instance where death results from negligent breach of duty to ensure safety, in the electricity sector.

Thirdly, Counsel Eyotre argued the Law Reform (Misc. Provisions) Act does not give monopoly to handle matters falling within or arising from that Act to the High Court, but that, Jurisdiction in matters where death is the cause of action under the Law Reform (Misc. Provisions) Act, is determined by the amount of pecuniary claim.

He further argued that in any case **Section 109(3)** of the said Electricity Act provides that; "*the Tribunal shall in the exercise of its Jurisdiction under the Act have all the powers of the High Court*".

The Complainant therefore had a choice to file the matter in issue which arises out of a safety issue in the distribution of electricity in either the High Court or the Tribunal.

The Complainant chose to file his Complaint in the Tribunal. Counsel Eyotre also argued that the Complaint had specifically been brought under the Electricity Act but not the Law Reform (Misc. Provisions) Act, and that even if the Law Reform (Misc Provisions) Act was applicable; the Complainant being a family member of the deceased qualifies under that Act to pursue this matter.

- Counsel Eyotre also argued against the award of costs to the Respondent, on the ground that the Tribunal gave both Counsel time to resolve any preliminary issues that might impede or affect proceedings in this matter and the Respondent's Counsel never raised this matter at that preliminary stage. Further, that on 22 June 2017, Counsel for the Respondent intimated to the tribunal that he intended to raise this point as an objection and was given time to raise it, but the Counsel abandoned it. He prayed for costs for the Complainant since Counsel and two witnesses had been brought in anticipation of testifying.

Finally, Counsel for Complainant prayed that if the tribunal is pleased to grant the Respondent's prayer for dismissal of the Complaint; the prayer be granted **without costs** because the Complainant filed this matter himself, without the benefit of guidance of Legal Counsel, which if he had obtained, he may have been better advised to file the matter in the appropriate forum, as advised by the Tribunal.

The Tribunal promised to deliver a ruling on this matter on 9th May 2018. Unfortunately, due to various matters beyond the Control of the Tribunal, that was not possible and the ruling is now belatedly delivered. The tribunal apologizes for the delay. The Tribunal carefully considered the issue at hand and the submissions of the respective Counsel.

The objection by the Respondent is that the Electricity Disputes Tribunal ("the Tribunal") lacked Jurisdiction to handle the subject matter of Complaint **EDT NO.13 of 2017** filed at the Tribunal, and also that the Complaint was not properly filed under the law.

The Complainant filed Complaint EDT/2017 against the Respondent claiming for special and general damages arising from the loss of pecuniary support on behalf of the family of the late Wanzale Sam, as the biological brother of the deceased and the caretaker of the dependants of the deceased. This death was allegedly caused by electrocution, resulting from the negligence of the Respondent. We understand the above to mean that the Complainant filed a Complaint (suit or action) in the Tribunal in his name as a brother of the deceased, on behalf of the deceased's family claiming special and general damages for loss they suffered as result of the death of the said Wanzala Sam, this Claimant's brother.

The Respondent argued that the Tribunal had no Jurisdiction to entertain this matter, because death is the cause of action in this Complaint. Complainant on the other hand argued that the matter was within the ambit of the Jurisdiction of the Tribunal because the death was occasioned by the default and or neglect of the Respondent in the execution of its mandate to distribute electricity, thus it is a matter relating to the electricity sector.

A brief review of the Statutory Jurisdiction of the Tribunal may be appropriate in the resolution of this contention. **Section 93 of the Electricity Act, 1999 Cap 145** states that *"there is established Electricity Disputes Tribunal"*. **Section 109(1)** states the Jurisdiction of the Tribunal thus; *"the Tribunal shall determine all matters referred to it relating to the electricity sector"*. **Section 109 (2)** therefore states that *"for avoidance of doubts the Jurisdiction of the Tribunal does not include the trial of any criminal offence or the hearing of any other that a licensee and any other Party may have agreed to settle in accordance with their agreement"*.

Section 109(3) therefore states that *"the tribunal shall in the exercise of its Jurisdiction under this Act have all the powers of the High Court"*. **Section 110(2)** of the same Electricity Act, states that *"Judgments and orders of the Tribunal shall be executed and enforced in the same manner as Judgments and Orders of the High Court"*.

*As to the qualifications of its officers, the Act in **Section 94 (2)** states that “A person is not qualified to be appointed Chairperson or Vice Chairperson of the Tribunal unless he or she qualifies to be a Judge of the High Court” while **Section 112** thereof states that; “the Tribunal shall have a registrar who shall be a person qualifies to be a registrar of the High Court... “It is also noteworthy that under **Section 110 (3)** Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order appeal to the High Court.*

Following from the above provisions and particularly reading **Section 109** thereof and in light of **Section 110(2)** of the said Act, we are convinced that the Tribunal has Jurisdiction to entertain a matter related to the electricity Sector that is referred to it, save for the exceptions stated in **Section 109(2)** of the said Act. The matter must however be relating to the electricity sector

The above opinion is reinforced by the ruling of the Supreme Court of Uganda in July 2017 in the case of **URA V RABBO ENTERPRISES (U) LTD & ANOR S.C.C.A NO.12 of 2004**, where the Supreme Court ruled that the ‘The Tax Appeals Tribunal “(TAT)” has original Jurisdiction to hear tax disputes and the High Court only has appellate Jurisdiction’. The above ruling arose from the consideration of the issue ‘**whether or not the High Court has unlimited Jurisdiction to adjudicate tax disputes.**

This was on an appeal from the Judgment of the Court of Appeal in the same case of **RABO ENTERPRISES (U) LTD V COMMISSIONER GENERAL, URA. CA NO. 51 of 2003**. The Court of Appeal had ruled that the High Court and the Tax Appeals Tribunal had concurrent Jurisdiction and a litigant had discretion to lodge an application with the TAT or file the dispute in the High Court.

Lady Justice Prof. Lilian T. Ekirikubinza in her lead Judgment in the Supreme Court stated among others that; **“I also respectfully disagree with the holding of the Court of Appeal that a litigant can choose whether to take a tax matter to the High Court as a Court of first instance or to the Tax Appeals tribunal. It must be noted that under Section 3 of the Tax Appeals tribunal Act: a person is not qualified to be appointed Chairperson of a Tribunal unless he or she is qualified to be appointed a Judge of a High Court. Furthermore, under Section 30, a person cannot be appointed a registrar of the Tax Tribunal if she or he is not qualified to be a registrar of the High Court. I opine that it would be bizarre that our legal regime would give power to an individual to choose where to lodge a complaint by offering choices between institutions equally qualified to handle the matter. In addition to the foregoing, it is apparent from a look at various provisions of the Act that proceedings before the Tax Tribunal are treated as judicial proceedings. For example, Section 19 of the Tax Appeals Tribunal act states that a decision of a Tribunal shall have effect and be enforceable as if it were a decision of a court; and under Section 21, a Tribunal may make an order as to costs against a Party, and the order shall be enforceable in like manner to an order of the High Court. I am also emboldened in my opinion by Section 27 of the Tax Appeals Tribunal Act which provided that a party dissatisfied with a decision of the Tribunal may appeal to High Court”, and further on as follows: “it would be bizarre that the legal regime would give the High Court dual Jurisdiction. The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunal and only taken before the High Court on appeal”. “It follows that it is the Tax Appeals Tribunal that had Jurisdiction to handle the matter”**

We draw an analogy between the Electricity Disputes Tribunal and the Tax Appeals Tribunal in light of the above ruling to make an inference and to reinforce our opinion that in as far as a matter is relating to the Electricity Sector, the Tribunal would have Jurisdiction to entertain it; and this is notwithstanding the fact that the Jurisdiction of the Tax Appeals Tribunal to handle tax disputes is premised first in the Constitution (Article 152(3) and then the Tax

Appeals Tribunal Act; while the Jurisdiction of the Tribunal to handle electricity sector related matters is derived solely from the Act. We believe that by inference drawn from the Supreme Court reasoning; if the matter is related to the electricity sector; the Tribunal has Jurisdiction to handle it, and that electricity related disputes must first be lodged with the electricity Tribunal and only taken before the High Court on appeal.

On the question whether the matter in **EDT 13 of 2017**, is related to the electricity sector, our opinion is that it is a matter within or related to the electricity sector, notwithstanding the fact that a death alleged to have taken place, is the cause of action. Among its objectives; **The Electricity Act 1999, Cap 145** is to regulate the distribution of electricity energy in Uganda (Section 2 thereof). In the long title, the Act is to provide among others: *“for the licensing and control of activities in the electricity sector; to provide for plant and equipment and for matters relating to safety”*.

The same Act in section 2 thereof **“Interpretation”** interprets what is *“distribution facilities”*, *“electric supply lines”* and *“distribution”* among others; the latter defined to mean *“operation, management or control of distribution facilities for the movement or delivery of electricity to consumers”*. The Respondent is a concessionaire licenced to distribute electricity in Uganda and thus its activities are part of the electricity sector in Uganda, and is licenced by the Electricity Regulatory Authority to operate in accordance with recognized best management practices in the electricity sector. In as far as safety is concerned, there is in place; **The Electricity (Primary Grid Code) Regulations 2003**.

The Code provides guidelines and procedures for the licencees of the electric power system to operate Uganda power systems and, and the Code is to be complied with by all licencees amongst whom are distributors. **“Under this code, Regulation 10:1. 1(a): a licensee is to ensure that its distribution system is safe”**. it also under various regulations therein empowers a licensee to disconnect or interrupt supply in the *case of an emergency or for reasons of health or safety*.

Under *The Electricity (Quality of service Code) Regulations, 2003*; electricity may be disconnected, “without notice where a dangerous condition exists for as long as the condition exists; or tampering with equipment” [*Regulation 17 (3) (d) (e)*]. The objective of these regulations is to regulate licencees’ activities relating to distribution of electricity so that its activities are carried out in a fair and reliable manner”. The Complainant in EDT13 of 2017 is alleging negligence on the part of the Respondent, in the manner of execution or conducting the business of distributing electricity which he alleges has resulted into death. At this point these are mere allegations, but allegations that relate to the conduct of a major aspect of the electricity sector; that is the distribution of electricity.

In the circumstances given the Jurisdiction and power given to the Tribunal under the a fore stated provisions of the Electricity Act (Section 109, 110) we are of the opinion that in as far as the matter of Jurisdiction is concerned, the Tribunal has Jurisdiction to handle this matter; as the matter at hand involves the conduct of the business of distribution of electricity, and safety aspects in the course of the distribution and supply of business. In as much as the Complaint alleges neglect in the manner in which the Respondent conducted its distribution and supply of electricity business; it is related and within the electricity sector.

We turn to the other point raised by the Respondent; that the suit was not properly filed under the Law. Respondent’s Counsel argued that because this Complaint, however it arose involves a claim for Compensation arising out of the death of someone, therefore ‘death’ is the cause of action; failure to specify that it was brought under the Law Reform (Miscellaneous Provisions) Act, rendered the whole of the claim bad in law.

Counsel argued that the Complaint (Plaint) was consequently an ordinary one, following the provisions of Order 6 of the Civil Procedures Rules, since the Complainant did not state that it was brought under the Law Reforms (Misc. Provisions) Act, Cap 79. She cited Supreme Court Case; **Uganda Electricity Board Vs G.W Musoke (1997) HCB23**.

(Supreme Court Civil Appeal No. 30 of 1993). Which was also referred to in **TWINE AMOS Vs TAMUSUZA JAMES H.C. CIVIL REVISION NO 11 of 2009**) Arising from Mukono Civil Suit No. 59 of 2008 where the issue in the latter case was *whether the failure to specify that the suit was filed under the Law Reform (Misc. Prov.) Act rendered the whole proceedings before the trial Court illegal and a nullity*. The Court in this case while referring to **UEB Vs G.W. MUSOKE**, the Supreme Court Case said, that the suit was not properly filed under the Law. Justice Odoki in the lead Judgment in **UEB VS G.W. MUSOKE** stated the rationale for the foresaid holding as follows: *“It is necessary to give a brief historical background to the Law Reform (Miscellaneous Provisions) Act, in order to understand the intention and purpose of the Act. According to the common law death could not give rise to a cause of action on other persons even if they were dependants on the deceased. This rule was derived from the ruling of Lord Ellenborough in Baker V. Bolton 1808 1 Camp.143, that in a Civil Court, death of human being could not be complained of as an injury.*

The development of railways in England led to an increase in the number of accidents which were both fatal and non-fatal. This made a change in the law imperative because while those who survived in an accident could recover substantial damages, the dependants of those who were killed could recover nothing. Therefore, in 1846, the Fatal Accidents Act (Popularly known as Lord Campbell’s Act) was passed which virtually overturned the harsh common law in so far as those dependants who were specified in the Act were concerned. The Fatal Accidents Act gave a new right of action for the benefit of the members of the family of the deceased which had to be brought by and in the name of the executor or administrator of the deceased or by’ and in the names of all or any or the members of the family.

This cause of action was entirely different and separate from the cause of action which survived for the benefit of the deceased’s estate and those two causes of action were usually joined in the same action.

The provisions of the Fatal Accidents were incorporated in the law of Uganda in 1953 by the Law Reform (Miscellaneous Provisions) Act. "It seems to me that the purpose of the Act was to provide a new cause of action which would enable dependants of the deceased to claim compensation for the loss suffered as a result of his death. It is true that section 8 of the Act (now Section 6 of Cap 79) does not use the word "dependants", but "members of the family". In my view, however, the intention was to provide for members of the family who were dependants of the deceased and therefore who had suffered pecuniary loss as a result of his death.

Going by the above Statement of Justice Odoki in the Supreme Court case, the Complainant, Moses Mutenye, a biological brother of the deceased would be entitled to bring an action under Sections 5&6 of the Law Reform (Misc. Prov.) Act Cap 79 in his name as a member of the family of the deceased for the benefit of the members of the family of the deceased Sam Wanzala.

Going by the authority of the Supreme Court ruling in **UEB vs. G.W.MUSOKE** referred to above, this Complaint however appears not to have been properly filed in that; the Complaint (action) omitted to state that it was brought before the Tribunal under the Provisions of the Law Reform (Misc. Provision) Act. We have earlier ruled that the matter in EDT 13/2017 is related to the Electricity Sector, and thus within the Jurisdiction of the Tribunal; however, the right to bring a cause of action of death is created by a Statute, and it was important that it is made clear where the right to file it, is derived from.

We have however come across **High Court Civil Suit No. 15 of 2006 Odong Cypriano Vs the Attorney General** delivered on 30th April 2009 by Justice Remmy Kasule as he was then at Gulu. One of the issues in that case was *whether or not the Suit was Competent in Law.*

It was submitted for the defendant in this case that the Plaintiff's suit is incompetent in Law because there was no specific averment in the plaint that the suit was being brought under the Law Reform (Misc. provision) Act, Cap 79. Laws of Uganda. As such the Plaint disclosed no cause of action and it ought to be struck out under Order 7 rule 11(a) of the Civil Procedure Rules. Reliance for this submission was based upon the case law decision of: **Baker Vs Bolton 1801 CAM. P. 493** where it was held that at Common Law, *"in a Civil Court, a death of a human being could not be complained of as an injury"*.

The learned Judge proceeded to narrate the history of the Fatal Accident Act; from 1846, whose essential provisions are applied in Uganda under **the Law Reform (Misc.Prov.)Act Cap 79**, and have been applied by Uganda Courts, as is exemplified in **Ali Mustafa Vs Songo Bus Company (1975) H.C.B 93** where it was held that if it is not pleaded that the claim is based upon the Act, then such pleading show no cause of action and **UEB Vs. G.W. Musoke (1997-2000) H.C.B23** where the Supreme Court (Uganda) explained that the Act was to provide a new cause of action which would enable members of the family of the deceased to claim Compensation for loss suffered as a result of death.

He quoted the Supreme Court in the Musoke Case as stating as follows: *"the question in each case is what pecuniary loss the member of the family has suffered"*.

Justice Kasule in his Judgment after recognizing the Judgment of the Supreme Court in the Musoke Case, went on to state: *"the Court is enjoined by Article 126 (2) (e) of the Constitution to administer substantive justice without undue regard to technicalities in the Plaint, the Plaintiff stated that he was the father of the deceased and he was so suing the defendant. The Plaint also averred that the foundation of the claim was unlawful shooting by a gun by a UPDF soldier. Finally, the Plaint also clearly stated that Plaintiff as a father, suffered pain, mental anguish and financial loss and seeks damages by reason thereof"*.

“This Court on the basis of the above averments in the whole body of the Plaintiff finds that the essential facts that make the Plaintiff’s claim fall under the Law reform (Misc.Prov.) Act is stated in the Plaintiff. Therefore, the mere absence of the mention of the fact that the Plaintiff’s claim is under the said Act, cannot be so fatal as to amount to the Plaintiff showing no cause of action. This Court, under the Constitutional duty to administer justice, for reasons given holds that the Plaintiff shows a cause of action”.

This Judgment seems to offer the Complainant in EDT 13/2017 a leeway. It is however not possible for the Tribunal to follow this Judgment for the reasons that it is not in consonance with the Judgment of the Superior Court, the Supreme Court in **UEB Vs G.W. Musoke** and it has not been tested by any appeal to our knowledge, and produced different results from the G.W Musoke case.

We believe that the reasoning of the Supreme Court leaves us with no choice but to conclude that without the application of the Law Reform (Misc. Prov.) Act, no cause of action in respect of death, irrespective of the foundation, (*wrongful acts, neglect or default of another*) can be sustained. It is the Statute that creates a wrongful death claim as a cause of action where none, otherwise existed.


We accordingly proceed to dismiss this Complaint; however, with no order as to costs. **The Tribunal feels that this should be so because preliminary objections ought to be raised at the earliest opportunity.** James Kiiza, the earlier Counsel for the Respondent had earlier intimated that he was to raise this objection and was in fact given the opportunity by the Tribunal to raise it but he never did so; and it was only later on when the Complainant had completed his testimony and the proceedings were well underway when another of the Respondent’s Counsel chose to raise the objection, which objection had the effect of disposing of this Complaint.

In the circumstances we decline to make an order as to costs.

We so order.

Dated at Kampala this.....th 12.....day of.....November.....2018

CHARLES OKOTH-OWOR


.....
Chairperson

ANACLET TURYAKIRA


.....
Vice Chairperson

ENG. DR. MOSES K. MUSAAZI

.....
Member