

THE REPUBLIC OF UGANDA  
THE ELECTRICITY DISPUTES TRIBUNAL  
COMPLAINT NO EDT/19 OF 2017

KATAKUWANGE MUKOOBA FRED ..... COMPLAINANT

VERSUS

UMEME LIMITED ..... RESPONDENT

**R U L I N G**

The complainant on 7<sup>th</sup> August 2017 filed a complaint in the tribunal challenging a debt of UGX.34,382,349/= levied by the respondent, Umeme Limited, as amount charged upon his premises for energy consumption and the subsequent disconnection.

In its response, the respondent denied disconnection of the complainant's power supply or that if it did, the disconnection was legal because the complainant failed/refused to pay for the bills which are still outstanding.

At the beginning of the trial, the parties indicated that they were willing to talk and find possibilities of amicable settlement. However, on 10<sup>th</sup> October 2017 Priscilla Namusikwe, Counsel for the respondent reported to the tribunal that the respondent had declined to settle the matter and wanted the same to be determined by the tribunal.

The complainant then took his oath and stated his evidence.

However, in the process it transpired that the witness lacked some vital supporting documents.

*RECEIVED ON 12/12/17*  
*Priscilla Namusikwe*

Since he said he had the documents at home, the tribunal afforded him an opportunity to avail them at an adjourned hearing. The hearing was accordingly adjourned to 25<sup>th</sup> October 2017.

On 25<sup>th</sup> October 2017, and at the beginning of the hearing, the complainant told the tribunal that he had brought the documents required by the Respondent. He presented the same and was allowed to proceed with his evidence which he did. In the process of the hearing, some of his documents were admitted and marked as Complainant's exhibits CEX1-CEX4. However, during the proceedings, Mr. Baguma Alan, Counsel for the respondent sought leave of the tribunal to raise some preliminary objections (PO), which in his view if upheld would dispose of the case without wasting time of the parties and tribunal. Leave was accordingly granted.

His objection was that the complaint did not raise any cause of action. He contended that for a complainant to sustain an action, he had to prove:-

- (a) That he had a right
- (b) The right had been violated
- (c) The respondent is liable.

He contended that since the electricity account was in the names of the complainant, power was consumed at the premises, and that the complainant had partially paid the bill, he had negotiations with the respondent and made several payment plans, then the debt is owing and the claim must be frivolous

and not maintainable against the respondent as no right has been proved or that the same was violated by the respondent.

He relied on the case of **TORORO CEMENT CO. LTD VS FROKINA INTERNATIONAL LTD C.A NO.2 OF 2001** in support of his submission. He prayed that the tribunal dismisses the case.

On his part, the complainant opposed the application. He said he had only gone half way of his evidence and sought to continue with evidence in proof of his case. He complained that the application to have his case dismissed is just a replica of how he has been mistreated by the respondent and prayed for justice to prevail.

We associate ourselves with the principles as stated by Mr. Baguma in respect to establishing the cause of action as pointed out in FROKINA INTERNATIONAL LTD (Supra)

In order to determine whether the facts raise a cause of action, the court(tribunal) has to peruse the pleadings and all the annextures to the pleadings. This position was stated in the case of SSEKAMWA VS. UMEME LTD CS NO.482 OF 2013; where his Lordship Kainemura Billy stated “ *As rightly pointed out by Counsel, court to establish whether or not the plaintiff has a cause of action against the defendant, the court is required to peruse the pleadings and attachments*”

In his statement of claim, the complainant states that he owned a factory, and had an account with the respondent. The account is confirmed by CEX1. The complainant further claims that at some time in 2001 there were acts of criminality in Jinja whereby thieves vandalized electricity equipment and stole transmitters and that the police force where he worked as the CID officer, requested to use his premises and account to charge the police radio and communication batteries which were to be used to track down criminals. He relied on a letter from the DPC Jinja to Customer Service Manager UEB. This letter was admitted as an exhibit and marked as CEX2. When the letter was received, the words "*Cashier please book P/C for this premises urgently.*" The evidence recorded so far has not disclosed the conclusion of this matter, as between police and UEB (or its successors).

In his claim the complainant claims that since the power was consumed partly by police allegedly to protect UEB property, it was unfair to ask him singularly to pay for power consumed in the process of charging communication and radio batteries belonging to police.

In its response to the claim, paragraph 2 & 3 thereof, the respondent denies liability because at the time the complainant became a customer, the respondent was not in existence. If the respondent's claim is that there is no contract between it and the claimant and the claimant is therefore a stranger, then a question may arise as to how the respondent disconnected the stranger or is demanding money from a stranger?

We think this question can only be answered after hearing the complainant's full story as well as that of the respondent. As pointed out, the complainant said he had just gone half his story and the tribunal cannot make any conclusion from that half story.

It is important to point out as we have done before, that the tribunal is a creation of the Statute, The Electricity Act 1999 Cap.145.

Section 111 of that above states ***"The tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice..."***

The rules of natural justice demand that parties to the tribunal must be given an opportunity to present their respective cases. The provisions of the above law are in conformity with the principles of natural justice.

The above provisions are an expression that the latitude of the tribunal is in some respects clearly different from that of the traditional courts.

The differences between courts and tribunals were explained in the case of **Union of India Vs. R. Gandhi 2010 11 SCC 1...** where the Constitutional Bench under paragraph 45 stated... ***"Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well recognized differences between courts and tribunals. They are:***

- (i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute or disputes of a***

*specified nature. Therefore, all courts are tribunals but all tribunals are not courts.*

- (ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an “expert” in the field to which the tribunal relates. Some highly specialized fact finding tribunals may have only technical members, but they are rare and are exceptions.*
- (iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.”*

We think Sec.111 of the Electricity Act conforms to (iii) above.

We are constrained to state that while in cases of extreme lack of evidence, the tribunal may be constrained to dismiss a complainant’s case without allowing him to give evidence if the tribunal is of the view that the evidence will not lead to the conclusion that the complainant had a right and the right was violated by the respondent. But the tribunal will in most cases exercise patience in listening to the complainant’s story, if the tribunal is of the view that not to, will result in travesty of justice.

As pointed out, the complainant said that he consumed the power in conjunction with police allegedly to the benefit of UEB. We have not heard any evidence to rebut that. The complainant in his opposition to the P.O stated that he was half way his evidence.

We think that the demands of natural justice require that he be allowed to complete his evidence and the tribunal will then hear from the respondent and make a decision.

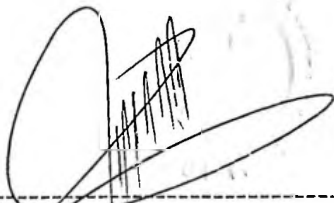
It is also important to note that while the respondent is represented by a lawyer, the complainant is a layman who is self-represented.

In our view this casts a heavy burden on the tribunal to avail the complainant ample opportunity to present his case fully and also listen to the respondent before drawing conclusion.

For the reasons given above, the objection by Mr. Baguma is over-ruled and the complainant is allowed to continue with his testimony.

We so order.

Charles Okoth Owor

  
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22<sup>nd</sup> / 11 / 2017

Chairman

Anaclet Turyakira

  
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Vice Chairman

Moses Musaazi

  
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Member