

THE REPUBLIC OF UGANDA  
THE ELECTRICITY DISPUTES TRIBUNAL  
EDT COMPLAINT NO.20/2017

1. FREDRICK E. SSEMPEBWA }  
2. ELIZABETH SSEMPEBWA } .....CLAIMANTS

VERSUS

UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED .....RESPONDENT

JUDGMENT

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

The issues for determination before the Tribunal were:

1. Whether the Claimants are entitled to an award of interest on the sum **UGX311,532,203.56/=**
2. If the above issue is answered in the affirmative, what is the applicable rate?

The facts leading to the above issues were as follows;

- 1) The Claimants are the registered proprietors of land comprised in Kyadondo Block 111 plot Nos, 272,273,279,281,282 and 283, situated at Lubatu in Wakiso District.
- 2) Part of the Claimant's above land was affected by the Respondent's Bujagali Implementation Project Transmission line.
- 3) The Claimants in April 2011 proposed to be compensated a sum of **UGX211,000,000/=** being payment for the Claimants' land on Block 111 Plot 283 Kyadondo at Lubatu, Kabaganda, taken by the Respondent and the developments there in.

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4) The Respondent in 2011 also expressed its willingness to pay the sum of **UGX 211,000,000/=**. The Respondent took over the land for the Project.

The Respondent had however from 2011 to the date of filing this complaint, 25<sup>th</sup> October 2017, not paid the said sum of **UGx 211,000,000/** to the Claimants.

5) The Claimants filed a Complaint in the Electricity Disputes Tribunal referenced as **EDT No.20/2017** on the date mentioned in the foregoing paragraph.

The Claimants sought for Orders that the Respondent:-

- (a) Pays adequate compensation for the land, crops and other developments that existed at the site originally identified for the way leave and for the defacement placed on the land that was first taken for the way leave.
- (b) Alternatively but without prejudice to (a) above, an Order for the payment of the sum of **UGX211,000,000/=** proposed, in its real value, current in dollar terms, as per the date of the proposal, or the date of request of payment plus interest at the commercial rate of 30% per annum compounded from 2011 till payment.
- (c) Pays compensation for loss incurred and interests thereon.
- (d) Pay interest on (a) or (b) above at the commercial rate of 30% per annum compounded from April 2011 till payment in full and on (c) from the date of judgment till payment in full, and,
- (e) Pay costs Prosecutions of this Claim

The Parties subsequently in what the Claimant described as 'in the spirit of reaching an amicable settlement' are said to have agreed to adjust the sum of **UGX 211,000,000/=** to inflation and the Claimants abandoned the dollar value adjustment. The agreed settlement came to **UGX 311,532,203.56/=** being the adjusted for inflation figure of **UGX 211,000,000/=** in what they described as it's real value today of what the Respondent had agreed to pay in 2011.

The Parties appeared before the Tribunal on 12<sup>th</sup> February 2018 and informed the tribunal of their decision to settle the dispute amicably on the above and the following terms recorded by the tribunal.

The terms were stated by Counsel for the Claimant to be as follows:

- (a) The Respondent shall pay the Claimants **UGx 311,532,203.56/= (Uganda Shillings Three Hundred Eleven Million Five Hundred Thirty Two Thousand Two Hundred Tree and Fifty six Cents)** in respect of the claim before this Tribunal. The computation of the above sum is based on the inflationary adjustment rate on the compensation award of **UGx 211,000,000/= (Uganda Shillings Two Hundred Eleven Million only)** which amount was disclosed to the Claimants in 2011 in respect of their land comprised in Kyadondo Block 111 Plot 283 situated at Lubatu Kabaganda Nangabo sub county in Wakiso District.
- (b) The question as to whether the Claimants are entitled to interest claimed as per their pleadings from 2011 to date and at what applicable rate shall be determined by the Tribunal.
- (c) Each Party shall bear its own cost of this claim.

Counsel for Respondent verbally expressed concord with the foregoing. The Tribunal then directed that the Parties formally incorporate the above terms into a consent award which would be filled in the Tribunal duly signed and executed on the on the 13<sup>th</sup> day of February 2018. Furthermore, the Tribunal directed that the Parties file written submissions on the question of whether the Claimant should be entitled to interest within a month from the date of that appearance before the Tribunal.

The foregoing facts underlie the issues stated at the beginning of the judgment. The Tribunal observed that the Claimants filed their written submissions in the Tribunal on 06 March 2018, within the timeline directed by the Tribunal. The claimants' counsel in their letter to the

Tribunal dated 10<sup>th</sup> May 2018 of the reference KS/ CV/17/5318 and stated to be copied to among others; the Claimant; Shonubi, Musoke and Co advocates, counsel for the Respondents; Uganda Electricity Transmission Company Limited, the Claimants stated that they had '*duly served the Respondent's Counsel with an already executed copy of the Consent Judgment together with our submissions on the issue of interest within the time stipulated by the Tribunal*'.

On its part the Tribunal takes note of the fact that to the date of writing this Judgment, (July 2018) there is not on the record of the Tribunal any documentation as directed by the Tribunal nor any evidence of any such documents having been filed by the Respondent in compliance with the Tribunal directives.

In the circumstances stated above, this tribunal shall proceed to consider whether to give effect to the Parties' consent judgment as recorded in the Tribunal on 12<sup>th</sup> February 2018 and to the two issues stated at the commencement of this judgment with; the only submission that is on the Tribunal's record, that is the Claimant's submission.

The Tribunal has no hesitation in giving effect to the Consent Judgment as recorded by it on 12<sup>th</sup> February, in the presence of Counsel Arthur Ssempebwa for the Claimants and Counsel Bonny Ngabire for the Respondents; both having expressly informed the Tribunal of their agreement and accord to settle the dispute amicably in the above stated terms and that the terms of their Consent Judgment be recorded by the Tribunal as earlier stated and hereby restated by the Tribunal.

(a) The Respondent shall pay the Claimants **UGx311, 532,203.56/= (Uganda Shillings Three Hundred Eleven Million Five Hundred Thirty two Thousand Two Hundred Three and Six Cents)** in respect of the claim before this Tribunal.

The computation of the above sum is based on the inflationary adjustment rate on the compensation award of **UGx 211,000,000/= (Uganda Shillings Two Hundred Eleven Million Only)** which amount was disclosed to the Claimants in 2011 in respect of their land comprised in Kyadondo Block 111 Plot 283 situated at Lubatu Kabaganda Nangabo sub county in Wakiso District.

- (b) The question as to whether the Claimants are entitled to interest claimed as per their pleadings from 2011 to date and at what applicable rate shall be determined by the Tribunal.
- (c) Each Party shall bear its own costs of this claim

The Tribunal recorded the Consent Judgment as stated above by the Parties.

In the High Court case of; BETUCO (U) Ltd & Anor Vs Barclays Bank of Uganda & Others. HCT – CC – MA – 243 of 2009; Justice Lamech Mukasa stated as follows: “The Law regarding consent judgment is that Parties to a Civil Suit are free to consent to judgment..... A consent judgment once recorded or endorsed by the Court, it becomes the judgment of the Court and binding upon the Parties”.

The above Court was in turn quoting from; Peter Muliira Vs Mitchell Cotts Ltd CACA NO.15 of 2007, where in the then Hon. Justice Kitumba, JA stated;- “the law governing consent judgment is that Parties to a Civil Suits are free to consent to a judgment. They may do so orally before a judge who then records the consent or they may do so in writing”.

The terms of the judgment which Counsel for both Parties requested the Tribunal to record were presumed by the Tribunal to be as a result of the Parties holding private negotiations among themselves and their lawyers, and were so recorded as the Consent Judgment of the Parties in this dispute.

The law is also that, so long as Counsel is acting for the Party in a case and his/her instructions have not been terminated, he/she has full control over the conduct of the trial and apparent authority to compromise all matters connected with the action. This is stated in the case of; Buladina Nankya & Anor versus Busio Konde 1979 HCB 239. Counsel Bony Ngabire from Shonubi, Musoke and Co. Advocates, which firm represented the Respondent orally expressed her consent to the terms as stated above and the Tribunal has no evidence that the instructions from the Respondent to the firm or from the firm in respect of Ms Ngabire's authority over this matter had been terminated or withdrawn.

In the circumstances discussed above, we have no hesitation to give effect to the Consent Judgment as recorded, with the agreement, consent and in the presence of Counsel for the Claimants and Counsel for the Respondent during the proceedings that took place on 12<sup>th</sup>

February 2018. The Consent Judgment takes effect from the date of this judgment. The Claimants are consequently as of today entitled to the sum of UGX **311,535,203.56/=** (adjusted from **UGX 211,000,000/=** agreed in 2011), in compensation in respect of their land at Block 111 Plot 283 Kyadondo at Lubatu, Kabaganda, Nangabo, Wakiso District.

The above stated amount is the amount the two Parties agreed upon in February 2018 to reflect inflationary adjustments or loss of value of the shillings as a monetary unit or call it depreciation on the compensation amount of UGX **211,000,000/=** previously agreed upon in 2011 between the two Parties.

The issue at hand to consider is **whether the Claimants are entitled to an award of interest claimed as per their pleadings, from 2011 to date and if the issue is answered in the affirmative, what rate should be determined as applicable, by the Tribunal.**

The Tribunal on 12<sup>th</sup> February 2018 directed that Parties file submissions in writing on this issue by 14<sup>th</sup> March 2018.

As noted earlier in this judgment, the Respondent did not file any written submissions and, no explanation/justification was made by the Respondent for this failure. The Tribunal is therefore not privileged to the wisdom of the Respondent in the determination of this issue.

It is the Claimant's case that the Parties agreed to enter into a consent wherein the Respondent agreed to pay them **UGX.311,532,203.56/=** which in real terms is the **UGX.211,000,000/=** that was offered to them in 2011 by the Respondent, *adjusted for inflation*. It is also their case and it is captured in the consent judgment recorded by the Tribunal that the Parties agreed to have the matter of interest and the attendant applicable rate referred to the Tribunal for determination.

The Claimants argue that the **UGX 311,532,203.56/=** that the Respondent has agreed to pay in 2018 only reflects, inflation adjusted to reflect the real value today of the then **UGX 211,000,000/=**, that the Respondent had agreed to pay in 2011 but failed to pay until this claim was instituted; yet the Respondent took over the land in question for its projects and are benefitting from the completed project.

On the other hand, the Claimants whose land was taken away back in 2009 have suffered detriment in that they have since not been paid the agreed sum, thus deprived of the use

On the other hand, the Claimants whose land was taken away back in 2009 have suffered detriment in that they have since not been paid the agreed sum, thus deprived of the use thereof and were at the same time also deprived of the use of their land. They argue that the action of the Respondent of depriving the Claimants of the use of their land without prompt and adequate compensation violated Article 26 of the Constitution of the Republic of Uganda.

It is the Claimant's case that by the Respondent failing to pay them since 2011, the Claimants were deprived of the opportunity to utilize the sum of **UGX 211,000,000/=** which had been accepted by the Respondent in 2011. The Tribunal studied the case for interest as presented by the Claimants, and made several observations, before eventually forming an opinion as to whether interest is payable in the circumstances of this case.

We noted from the "Dictionary of Banking and Finance: A commentary on Banking, Financial Services and Corporate and Personal Finance," authored by Derrick G. Henson, a Barrister and Fellow of the Institute of Bankers, UK published by Pitman Publishing Ltd, on page 352 thereof, the following statement "*it may be said of Inflation as Lord Denning said of bankers; it is easier to recognize than to define*".

*It may be expressed in terms of rising prices or conversely, the fall in the purchasing power of a monetary unit'.*

The same dictionary on page 353 refers to a term known as "Inflation Accounting" and states that this is "*the term applied to the various techniques adopted in modern times to adjust business accounts to correct the impact of inflation*". *The commentary following the above states that 'the traditional methods of financial accounting did not reflect the changes in the purchasing powers of money.....'.*

The Parties to these disputes recognized between themselves that inflation had taken place since 2011, adversely affecting the purchasing power or value of the Ugandan Shillings and applied some form of Inflation accounting in recognition of the fact that the Ugandan Shilling as a monetary unit does not have a constant value or purchasing power, because of the effect of inflation. They, through the techniques that they presumably applied, arrived at the sum of **UGX 311, 532, 2013.56/=** to represent the true value today of the **UGX 211, 000,000/=** of 2011. What the Parties did was to recognize the value or purchasing power of the amount of monetary units that they had agreed upon 2011, in terms of today's value or purchasing

adjust the compensation then agreed in 2011 to reflect the inflationary trends that have since taken place to date in 2018, and the time value of the compensation.

The Parties have thus themselves taken care of the issue of the time value of money to UGX311,532,2013.56/= today. The issues of the Ugandan Shilling having depreciated over that period and or the value of the land having since 2011 risen, was presumably taken in account by the compromise resulting in the agreed compensation of UGX311,532,203.56/=.

The Tribunal must now consider the aspect of “interest” and whether it is payable in these circumstances. ‘Interest’ is commonly understood to be the cost of money.

The Claimants helpfully drew the Tribunals’ attention to the definition of “interest” as defined by Black’s Law. Dictionary 8<sup>th</sup> Edition as being, *‘the compensation fixed by agreement or allowed by law for the use or detention of money or for the loss of money by one who is entitled to its use’*. We found the above definition from Black’s Law Dictionary very relevant in the circumstances of this case. We observe that there was no interest agreed upon between the Claimants and the Respondent in this instance. The definition in the Dictionary referred to above, however provides for interest *allowed by Law*. As pointed out in the Claimant’s submission, a consideration of **Section 26(2) of the Civil Procedure Act, Cap 71**, Laws of Uganda shows that Court and in this instance the Tribunal may in its discretion lawfully award interest on a decree for payment of money, and at such rate as the Court deems reasonable.

The Claimants submit that the Respondent ought to be ordered to pay interest on the sum of money that it agreed to pay in 2011 but to date has not paid; that is, the adjusted for inflation sum of UGX311,532,2013.56/=. Specifically, they pray that *‘an award of interest is granted and the interest is awarded from the time when the proposal of UGX211, 000,000/= was accepted by the Respondent to date’* and that *‘further more the Claimants were deprived of the opportunity to utilize the sum of UGX 211,000,000/= which had been accepted by the Respondent in 2011’*.

The Claimant submitted that the rationale for the award of interest has been ably explained by Justice Christopher Madrama (as he then was) in **Esero Kasule versus Attorney General HCMA No. 688 of 2014**. They submitted that while referring to ‘Stroud’s Judicial Dictionary of Words and Phrases’, Sweet & Maxwell 2000 Edition; interest was defined as compensation paid by the borrower to the lender for deprivation for the use of his money, Justice Madrama



held that interest is meant to compensate a Plaintiff for the deprivation of the use of his money that remained unpaid at the time of institution of the suit.” They further submitted that “the essence of interest was explained by Lord Wright in **Riches Versus Westminster Bank Ltd (1947) 1 ALLER 469** which was referred to by Justice Madrama in **Esero Kasule versus Attorney General (supra)** as follows:-

*The essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money at the due date or conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for that deprivation”*

The Claimant argue that an award of interest is meant to compensate them for the deprivation of the UGX311, 532,203.56/= (UGX 211,000,000/= when adjusted to inflation) which was agreed upon by the Respondent as adequate and prompt compensation for the suit land in 2011; there being a significant delay in payment from 2011 to date. They expound their claim by stating that they “were deprived the opportunity to use the offered sum at the time for other development projects”

The Dictionary of Banking and Finance by Hanson.DG, referred to earlier in this judgment defines ‘interest’ as being “*the cost of money: it is the money which is paid for the use of money*”. While ‘inflation’ and ‘interest’ may be related, in that the rate of either can influence the other; nevertheless they are essentially different in nature; inflation relates basically ‘to the purchasing power of money’, thus, its time value; ‘interest’ on the other hand relates basically to the cost of money. The above definition coupled with that in the Black’s Law Dictionary leaves us in no doubt that the Claimants have made a sound case for award of interest on the monies then and now still due to them from the Respondent. The Tribunal is in agreement with the Claimants’ submissions and prayers that interest be awarded to them, payable by the Respondent on the amounts due to the Claimants. We are however of the opinion that the amount due to the Claimants from April 2011 when the sum deemed to be adequate and prompt compensation was UGX211, 000,000/= and that this amount is to attract interest up to the date of this judgment when the consent judgment recorded by this Tribunal on 12<sup>th</sup> February 2018 has been given effect by this Tribunal. The adjusted for inflation amount of

**UGX 311,532,203.56/=** will separately attract interest from the date of this judgment to the date of full payment.

It is consequently the holding of the Tribunal that it deems it fit to award interest on the amounts then and now due respectively, as stated above, ie interest on **UGX 211,000,000/=** from April 2011 to the date of this judgment and interest on the **UGX 311,532,203.56/=** from the date of this Judgment to payment in full.

The Claimants pray that interest be awarded at the rate of 30% per annum compounded from the date the Respondent expressed willingness to pay the Claimants in April 2011, till the date of payment. They deem the rate of 30% per annum as a just and reasonable rate because, in their opinion, the Claimants were deprived of the Opportunity by the Respondent, to be paid the agreed sum from 2011 to date.

The Claimants in their pleadings therefore pray for award of interest at the rate of 30% per annum. As observed earlier interest was not agreed upon by the two Parties; however under Section 26 of the Civil Procedure Act, the Court may award interest at such rate as the Court deems just and reasonable to be paid. The Claimants plead that 30% is the Commercial bank rate and thus applicable. It is common knowledge that different banks in Uganda are free to set their own rates, but it is also common knowledge that these rates tend to be strongly influenced by the Central Bank Base Rate. The Central Bank Base Rate is the interest rate at which the Central bank lends money to the Commercial banks. It is said by economists that this base rate is the most important interest rate in the economy of any country; because it tends to influence not only Commercial banks interest rates but all other interest rates in the economy; from mortgage rates to the saving rate one gets in a savings account and Bond rates or yields.

In practice, because Commercial banks' interest rates are heavily influenced by the Base Rate, the interest rates set by all Commercial banks tend to be about the same from Bank to Bank. This state of affairs is further brought about by the fact that Commercial banks compete with each other for depositors and borrowers. The resultant Competition keeps interest rates from all banks in a narrow range.

With the above in mind, the Tribunal of its own volition procured from the Uganda Bankers Association, an Association that brings together all Commercial banks in Uganda, Interest Rate Trends between January 2011 to June 2018.

Uganda Bankers' Association Statistics showed the trend for the '*Average non Weighted Lending Rates*' as follow:

Year	%
2011	21.81
2012	26.2
2013	23.3
2014	21.6
2015	22.6
2016	22.6
2017	23.9
2018	20.3

This gave us a panoramic view of what the average lending rates have been over the years 2011 to 2018.

It can be fathomed from our earlier discussion herein, that it is established law that in proceedings in Court for the recovery of debts or damages, the Court has power to include in the sum for which Judgment is given interest at such rate as it thinks fit on the debt or damages for the period between when the cause of action arose and the date of Judgment.

The Tribunal shall accordingly proceed to award interest for the aforesated period between when the cause of action arose and the date of Judgment and interest from the date of Judgment to payment in full respectfully. In the circumstances the Tribunal deems as just and reasonable an interest rate of 20% per annum to be applied on the award as follows: the amount of **UGX 211,000,000/=** agreed upon in April 2011, is to attract interest at the above rate of 20% per annum from April 2011 to the date of this Judgment; 20% per annum is to be

annum is to be applied on the adjusted for inflation amount of **UGX311,532.65/=** from the date of this Judgment to the date of full payment.

The above orders put the payment of interest on the award in the context of the definitions stated herein before. The Parties agreed, each to bear their costs.

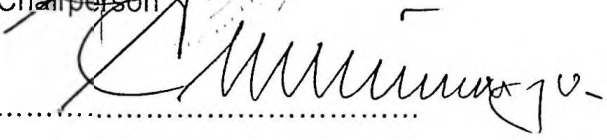
We so Order.

Dated at Kampala this 18<sup>th</sup> day of Sept 2018.

CHARLES OKOTH-OWOR

  
.....  
Chairperson

ANACLET TURYAKIRA

  
.....  
Vice Chairperson

ENG. DR. MOSES K. MUSAAZI

.....  
Member