

**THE REPUBLIC OF UGANDA**  
**ELECTRICITY DISPUTES TRIBUNAL OF UGANDA SITTING AT KAMAPLA**  
**IN THE MATTER OF THE ELECTRICITY ACT CAP.145**  
**AND IN THE MATTER OF THE ELECTRICITY DISPUTES TRIBUNAL (PROCEDURE) RULES 2012**  
**COMPLAINT NO.EDT/04 OF 2014**

**IN THE MATTER OF**

**ENGINEER KAMANYIRE PATRICK T/A  
STANLEY TECHNICAL SERVICES LTD ..... COMPLAINANT**

**VERSUS**

**1. UMEME LIMITED  
2. ELECTRICITY REGULATORY AUTHORITY ..... RESPONDENTS**

**RULING**

**Background**

On 28<sup>th</sup> February, 2014 M/s Birungi & Co. Advocates, Counsels for the Complainant, filed a Complaint against M/s Umeme hereafter referred to as “the Respondent.”

The Complaint was registered by this tribunal as Complaint No.4 of 2014. The Respondent filed their response on 24<sup>th</sup> March 2014. The matter came up for the first time on 9<sup>th</sup> May 2014, and both parties informed the tribunal that they were ready to proceed. The parties were then advised by the tribunal to file a joint scheduling memo before the hearing. The matter was accordingly adjourned for hearing on 28<sup>th</sup> May 2014.

When the matter next came up, Mr. Nsubuga, Counsel for the Complainant informed the tribunal that had received some new information; which in his opinion necessitated the addition of another party namely, Electricity Regulatory Authority (ERA). Ms. Priscilla Namusikwe, learned Counsel for the Respondent had no objection to such amendment. The matter was accordingly adjourned to allow the Complainant to effect the amendment.

Although the Respondent's Counsel had no objection to the amendment (adding a 2<sup>nd</sup> Respondent); no amendment was effected.

When the matter came up on 27<sup>th</sup> August 2015, Ms. Jackline Kizito – Counsel for the Complainant applied for a second amendment, to strike out the name of the complainant – Eng. Kamanyire Patrick t/a Stanley Technical Services Ltd, and substitute it with Stanley Technical Services Ltd.

She also wanted to amend some facts (she did not disclose the facts) which in her view would give effect to the amended complaint. The application was according to Ms. Kizito brought under 0.6. Rule 19 CPR.

The application was opposed by the Respondent's Counsel Ms. Priscilla Namusikwe on the following grounds;

(i) That the application was brought under a wrong rule. She argued that since the applicant was applying for substitution, the correct law according to her should have been O.1 Rule 10.

(ii) That the application was not supported by any grounds.

She noted that while this tribunal is empowered to use its discretion to allow the application, such discretion must in her view be exercised judicially and within the parameters of law. She contended that an application not supported by grounds is not tenable under the law.

(iii) That the application had been brought with inordinate delay. She noted that the first application to amend was on 22<sup>nd</sup> September 2014 (a year earlier). She contended that the complainant had an opportunity to amend but had to date failed to amend.

(iv) That the supposed Eng. Kamanyire Patrick T/A Stanley Technical Services Ltd complainant was a non-existing person and in law cannot apply to amend by substituting another party.

She cited Salomon V. Salomon & Co. Ltd; [1897] A.C. 22 to the effect that a company has a legal existence apart from its owners with capacity to sue or be sued on its own. She contended that the complainant Eng. Kamanyire t/a Stanley Technical Services Ltd is a non-existent person with no capacity to sue and is unknown to the Respondent. She referred the tribunal to the case of V.G. Keswara & Sons Vs. Sheikh Dawood, Misc. Appln. No.543 of 2011 where it was held; *“a suit filed by a non-existing entity cannot be amended by substitution of non entity or amendment of the same because it discloses no cause against the Respondent.”* She prayed that the complaint be struck out.

In rejoinder Counsel Kizito argued that Reg.6(5) of the Electricity Regulatory Authority Consumer Complaints handling guidelines empowers the tribunal to exercise natural justice. She argued that the proposed amendment does not occasion any fundamental alteration of the pleadings and no injustice will be caused to the Respondent.

We have examined the record as well as listen to the arguments of both Counsels.

According to Ms. Namusikwe, the application for amendment was made under O.6 Rule 19 states instead of O.1 Rule.

**O.6 Rule 19 states;** *“The court may, at any stage of the proceedings allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”*

**O.1 Rule 10 states;** *“Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instructed through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.”*

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To that extent, the applicant is entitled under the law to make an amendment in so far as the same is necessary to determine the real issues in controversy. Equally the party is under O.1 Rule 10 entitled to substitution of the parties. However, the said amendment or substitution must be grounded in law.

The first objection by Counsel Namusikwe is that the application was made under the wrong rule. She argued that the application was made under 0.6 Rule 19, instead of 0.1 Rule 10 which allows substitution of the party.

**Rule 41** of the Rules of this tribunal empower the tribunal to apply with modification the Civil Procedure Rules (CPR) where no procedure is provided by the tribunal rules.

The rules of the tribunal do not provide procedure for application for amendment or substitution and therefore resort must be had to the CPR.

**O.52 (1) CPR states;** *All applications to court except where otherwise expressly provided for under these rules, shall be by motion and shall be heard in open court.*

**O.52 Rule 3 CPR** states that *“every motion shall state in general terms the grounds of the application and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.”*

**O.1 Rule 22 (i)** states that application under Rule 8,5, 17, 20 shall be by chamber Summons.

O.1 Rule 22 (2) states that application under Rule 16 shall be by Summons in Chambers.

O.6 Rule 31 states that application under O.18, 19, 22, shall be by Summons in Chambers

From the above, it is clear that the mode of application by Counsel Kizito is faulted.

However, it is now trite law that bringing an application under a wrong rule is not fatal provided that the court has the jurisdiction to grant the order. This position was clearly stated in Saggu Vs. Roadmaster (U) Ltd 2002 EA, 258 and others where Kikonyogo DCJ as she then was stated.... *“Regarding the second point of objection that the notice of motion did not cite the law under which it was being brought, the general rule is that where an application omits to cite any law or cites a wrong law but the jurisdiction to grant the order sought exists, then the irregularity or omission can be ignored and the correct law inserted.”*

The tribunal adopts the same reasoning.

It is our ruling that it was not fatal for the applicant to bring the application under 0.6 Rule 19 instead of 0.1 Rule 10, since in any case the tribunal had the jurisdiction to grant the order. The objection by Ms. Namusikwe on this ground is therefore declined.

The second objection by Counsel Namusikwe is that there were no grounds to support the application.

Indeed when Ms. Kizito made her 2<sup>nd</sup> application, the same was made orally and was not supported by any grounds. It is clear from the above CPR provisions that the oral application by Ms. Kizito did not contain grounds in law. The tribunal was only treated to verbal assertions by Ms. Kizito that the amendment was necessary for the tribunal to decide issues in controversy.

The above notwithstanding and given our ruling that the non compliance with the rules is not fatal, the objection on this ground is declined.

The third objection is that the amendment was brought with inordinate delay. As pointed out the first application to amend was brought on 22<sup>nd</sup> September, 2014 but by 27<sup>th</sup> August 2015, there was no conclusion of this application. Doubtless, there was delay!

Ms. Namusikwe however did not satisfy court that the delay was exclusively caused by the complainant and that allowing the amendment was prejudicial to the Respondent.

Again given our ruling in the grounds prior, the objection on this ground is also declined.

The last objection by Ms. Namusikwe which in our view is the crux of this matter is that the applicant is a non-existent party and cannot apply to amend/substitute. She argued that Eng. Kamanyire t/a Stanley Technical Services Ltd is a non-entity with no capacity to sue. She relied on Salomon Vs. Salomon [1897] A.C 22, an old case which is to the effect that a company once incorporated becomes a separate legal entity from the promoters/shareholders/Directors.

As pointed out, the complaint was filed by Eng. Kamanyire t/a Stanley Technical Services Ltd, which in law is a non-existent party and therefore cannot sue. It lacks the capacity to sue. Refer to Fort Hall Bakery Supply Company Vs. Frederick Mugani Wangoe [1959] EA p.474.

In her submission before the tribunal, Counsel Kizito prayed that we apply the principles of natural justice to accept the application as opposed to the rigid civil procedure rules. This to her is grounded in Ref 6(5) of the Electricity Regulatory Authority. Counsel however did not elaborate how these regulations apply to the dispute before us.

We are aware that under our Constitution, a court or tribunal is enjoined with power to apply substantive justice instead of technicalities. (Art.26 (2)). The same spirit is embedded in section 111(4) of the Electricity Act which states; *"The tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice."*

However the issue of filing a complaint by a non-existing party is not a matter of procedure. It is a matter of law.

Paul Nyamarere V. UEB in liquidation [2008] HCB 126 stated that a non-existent entity can't sue or be sued. Any suit against or on behalf of a non-existent entity is a nullity. What we observe in the complaint before us is that Counsel for the Complainant regarded the legal person – the company – as identical with the human person – its director or shareholder. The position is that the identity of the human person; Eng. Kamanyire Patrick cannot be merged with that of the legal person; Stanley Technical Services Ltd!

A party to file a suit in the names of a non-existing party is therefore an illegality which cannot be sanctioned by this tribunal as was held in Mukula International Vs. His Eminence Cardinal Nsubuga and Anor [1982] HCB 11 where court stated *“a court of law cannot sanction what is illegal and an illegally once brought to the attention of court overrides all questions of pleadings, including any admission therein.”*

It is our ruling that the complaint herein was filed by a non-existing party, an illegality and nullity.

The consequences of such complaint were stated in the case of Smith Vs. Anderson [1980] 15 CH 247, when court held *“The order of court is that the action be struck out, as the alleged plaintiff has no existence.”*

Being cognisant of the fact, we accordingly hold that Eng. Kamanyire t/a Stanley Technical Services Ltd has no existence in law, a complaint filed by it, a non-existent entity is a nullity and must be struck out. We accordingly order that the complaint be struck out. Since a non-existing party cannot pay costs, no order is made as to costs.

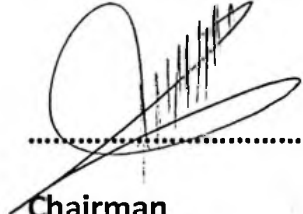


It is so ordered.

Dated at Kampala this.....<sup>21<sup>st</sup></sup>.....day of **October**, 2015.

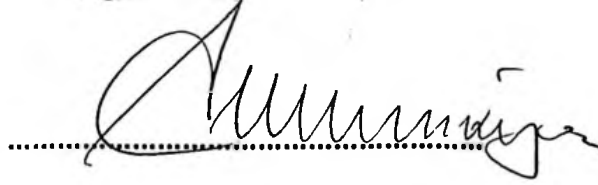
Signed:

**Charles Okoth Owor**



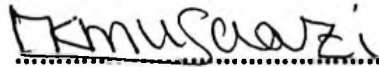
.....  
**Chairman**

**Anaclet Turyakira**



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**Vice Chairman**

**Eng. Dr. Moses Musaazi**



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**Member**