



In his complaint, the Complainant alleged that in mid 2007 the Respondent's workers, servants and or employ<sup>ees</sup>ments without justifiable cause, went to his premises and disconnected electricity supply and distributions gadgets like wires, meters charger, and cables leaving him without power supply.

The Complainant alleges that despite the disconnection, the Respondent continued to bill and charge him a service charge. He further alleges that despite various reminders, the Respondent refused and or neglected to restore power supply to him. The Complainant contends that the Respondent's actions were unfair, unjust and discriminatory contrary to the Electricity Act **Cap.145 Sec 11(2) (11) and Sec. 77**

He further contends that the acts of the Respondent were illegal and in bad faith. The complainant contends that as a result of the disconnection he was compelled to use alternative power like petrol generator for which he seeks damages.

In its response, the Respondent denied the Complainant's facts constituting the cause of action and put the complainant to strict proof. The Respondent contends that if the complainant suffered any loss; it was a result of the complainant's negligence in particular in failing to report the disconnection to the relevant local authorities and service provider.

The Respondent further contends that the supply was cut off as a result of a heavy down power resulting in the falling of electricity lines connecting the Complainant's power which fell and were later vandalized by unscrupulous people purporting to be agents of the Respondent. The Respondent further contends that upon receipt of the Complainant and further confirmation of the situation, the Respondent immediately started remedial work resulting in restoration of power supply.



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The Respondent further contends that the heavy down pour which resulted in the falling of the electric poles was an act of God over which it had no control.

The parties filed a joint scheduling memorandum in which the following facts were agreed;

- (a) *That the Complainant was and is still a lawful user and consumer of power*
- (b) *That sometime in mid 2007 there was a disconnection unto the premises of the complainant, which left him without power.*

The following issues were drawn:

- (i) Whether the Respondent is in breach of their statutory duty and obligation?
- (ii) Whether the disconnection of the Complainant's power supply was done by the Respondent and if so whether it was unjustified and unreasonable?
- (iii) Whether the Respondent continued to charge the complainant for the electricity during the period of electricity supply cutoff?
- (iv) Whether the Respondent failed and or neglected to restore electricity supply to the complainant?
- (v) Whether the Respondent acted in undue preference and discrimination in supply of electric power?
- (vi) Whether the complainant has any available remedy?

The Complainant filed a Witness Statement which was his evidence in chief. Complainant was designated witness CW1.

In his testimony, CW1 testified that in 2007, the electricity poles supplying power to his residence fell and were only replaced in 2009 and that for the 2 years he did not have



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supply of electricity despite the fact that he reported to the Respondent, the disconnection of the supply and despite repeated pleas by him for the power to be restored.

That during those 2years the Respondent's agents always assured him they were going to restore the power but did not do so. The 2 poles leading to his residence had been destroyed and the wires were later taken by the Respondent after 2 days. CW1 further testified that even when he did not have power, the Respondent kept billing him. The receipts of payment were tendered and marked CEXB 1-16.

The witness further testified that during the time he did not have power he was using paraffin, charcoal, firewood which were costly.

During cross examination, the witness testified that while he reported, he did not know the names of the person he reported to. He said he reported to the office where he normally makes payments and was given a number and promised somebody would come to rectify the problem. He said after some days of reporting, the staff started being rude to him. He said after some time the wires were removed by some unknown people but the meter remained.

The Respondent's only witness was Alexander Asimwe, RW1. His evidence was received by way of a sworn statement which was also adopted as his evidence in chief. In his testimony; the Respondent's witness said he is a Senior Linesman and his duties among other things include construction of poles and ensuring that electricity wire connections are well maintained and are up to acceptable standards. The witness testified that in 2009 the Respondent received a complaint regarding one of the supply lines in Butema trading centre and the complainant's premises.



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That upon receiving the report, the technical officer visited the site and disconnected power to neighboring homes. He also carried out risk assessment and submitted a report and materials list required for reconstructing the poles and lines. The witness and his technical team were assigned to reconstruct the fallen poles.

RW1's testimony was that on reaching the site on **13<sup>th</sup> February 2009**, he observed that four poles were found broken and badly leaning, the conductors were missing and the 4 poles were not covered by weeds and grass and as would be the case if the poles had been on the grounds for 2 years or more.

The witness and his team made a risk assessment and immediately reconstructed the power line and replaced missing conductors and electricity poles. The witness further testified that the Respondent maintains its equipment in good and safe working conditions and carries out repair checks and inspections in lawful and timely manner. He testified that the Respondent has a system where customer complaints are logged in and followed up for action and such incidents are only closed after completion of work. He said the Respondent has proactively carried out customer drives to encourage customers to report and that the Respondent normally responds in haste where such reports are made. He maintained that the complainant did not report in **2007** but in **2009**. He also testified that where there is a fault, the circuit breaker normally detects the fault thereby triggering investigations. The witness discounted heavy rains as the cause of the fall of the poles. He attributed the fall of the poles to acts of vandalism or intentional damage by third parties.

As regards C.Exb. 1-16 he said there are receipts of standard service charges which the Respondent charges to customers even when they have no power. He said since the problem was long addressed; the complaint in the tribunal was unnecessary.

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During cross examination the witness RWI was shown a document entitled "***Vandalized line service for Kasajja Thomas A/C 101540748***"

He said that the document was a complaint form and the information or data must have been from a complaint by the complainant. He said he did not receive the complaint but got to know of it through his immediate supervisor of operations and maintenance; Engineer, Atto Alex. The witness said that complaints can be made by customers walking into the Respondent's offices and lodging a complaint; using a toll free line 0800185185 Or 800185186 or finding Umeme staff in the field and reporting.

He said it is not possible for a fault not to be attended to for 2 years because the Respondent has sensitized customers through radio, newspapers on how to report faults. The witness said he did not know how the complainant made his complaint. Both parties filed written submissions.

We shall consider the issues;

**Issue 1: Whether the Respondent was in breach of their statutory duty and obligation**

Sec 77 (1) provides "***that subject to this part and any other regulations made a licensee shall upon being required to do so by the owner or occupier of any premises-***

- (a) ***Supply electricity to those premises"***
- (b) So far as may be necessary for that purpose provide supply lines or any electric plant or equipment.

Under Sec.77 (6) ***...where the licensee defaults in supplying electricity to the consumer, ... the consumer may appeal to the authority..."***

Under 77 (7) the licensee is only allowed to interrupt supply for such periods as where it becomes necessary for carrying out inspection, tests, repairs, alterations, reconstruction.



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In his complaint filed in the tribunal on 4<sup>th</sup> February 2009, the complainant in para 4(ii) stated "that sometime in mid 2007, the Respondent's workers, servants and or employee without justifiable cause went onto the premises of the complainant and disconnected electricity supply and distribution gadgets i.e wires, cables, and meter charge, leaving the complainant with no power supply.

In para 3(iv) the complaint avers that "todate despite various reminders, the respondent has refused, failed and neglected to restore power supply to the complainant.

In his sworn testimony and cross-examination, the complaint avers that his lines fell in 2007 and after wards the poles were taken away.

Although the complaint is not sure about who took away his poles, he is consistent that power to his house was disconnected in 2007.

In its response, "the Written Statement of Defence to the Complaint" para 5(a); the Respondent states "*That sometime early 2007, during heavy down pour the electricity lines connecting to the complaint house fell and were later vandalized by unscrupulous people purporting to be agents of the Respondent.*"

As pointed out the parties filed a joint scheduling memorandum where the following facts were agreed;-

- (a) That the complainant was and is still a lawful user and/or consumer of power
- (b) That sometime in mid 2007 there was a disconnection onto the premises of the complainant which left him without power.

The complainant says power to his house was reconnected in 2009. This is also confirmed by RW1, the only respondent's witness. In his sworn evidence, RW1 testified that the Respondent had no information regarding the disconnection till 2009.

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The witness also testified as per paragraph 11 of his witness statement that even without anybody reporting *"where a power line has fallen, the circuit breaker would detect a fault on the network which would trigger an investigation"*

It is noted by the tribunal that despite the fact that the Respondent had admitted both in its reply to the complaint and in scheduling conference that the disconnection of power to the complainant's premises was in 2007; the witness RW1 in his testimony says it was in 2009. He also, contrary to paragraph 5(a) of the Written Statement of Defence denies that there was a storm or heavy down pour.

The evidence of RW1 is clearly a departure from the Respondent's pleading and expressly contradicts the pleadings and agreed facts as to the year when the disconnection took place.

It is now trite law that a party cannot be allowed to depart from its pleadings. This was the principle in **Captain Harry Grandy Vs. Capeir Air Charter Ltd** where Sir Ronald Sinclair said

***"Object of the pleadings is of course, to ensure that both parties shall know what are the points in issue between them, so that each may have full information of the case he has to meet and prepare his evidence to support his own case or to meet that of his opponent."***

The above was cited with approval in **Uganda Breweries Ltd Vs. Uganda Railways Corporation Civil Appeal No.6 of 2001** where Oder JSC said ***"We agree with the view that must be the reason for the legal requirement that a party should not depart from its pleadings."***

In **Celtel Uganda Ltd Vs. Uganda Revenue Authority HCT-00-CC-CA-0001 OF 2005** Hon. Justice Lameck Mukasa also observed that ***"It is trite law that evidence must be consistent with pleadings."***

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It is clear from the above that the Respondent did not only depart from its pleadings but the sworn testimony of the Respondent's witness "RW1" departed from the pleadings.

After carefully perusing the pleadings, the joint scheduling memorandum and listening to both witnesses, we have no problem in coming to the conclusion that power to the complainant's house was disconnected in 2007. The evidence by RW1 that power was disconnected in 2009 is at variance with the Respondent's pleading and agreed facts in the joint scheduling memo and is in our view an afterthought; it is hereby rejected. Since the Respondent accepts that it rectified the same in 2009. We agree ipsofacto, the power supply was off for 2 years and further agree with Counsel for the complainant that the Respondent by failing, refusing or neglecting to restore power for 2 years was clearly in breach of its statutory duty and obligation to the Complainant in his capacity as consumer as imposed by Sec.77 (1) (a) of the electricity Act 1999. This is more evident by the fact that RW1 claimed in paragraph 11 of his Witness Statement that the Respondent carried out repair checks and inspection in timely manner and that where there is a fault, the circuit breaker normally detects the fault thereby triggering investigations. The said statement is not supported by the fact of the Respondent failing to restore power for a period of <sup>2</sup>/<sub>1</sub> years.

**Issue No.2: "Whether the disconnection of the complainant from power supply was done by the Respondent and if so, whether it was justified."**

In his complaint, the Complainant under para 4(ii) alleges that the Respondent's workers, servants and employees disconnected power to his house. This allegation is denied by the Respondent who did put the Complainant to strict proof.

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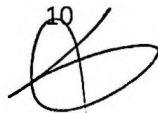
In paragraph 5(a) of the Respondent's Written Statement of Defence; the Respondent attributed the disconnection to a heavy down pour and vandalism by unscrupulous people.

In his witness statement, which was adopted as evidence in chief, para 4, the witness "CW1" states "Sometime in April 2007, the electricity wire lines to my residence fell and the Respondent replaced them on 23<sup>rd</sup> February 2009. In para 8 of the statement, the said witness says after 2 days he realised the poles with electricity lines were destroyed and later taken by the Respondent's agent.

In cross-examination by Ms Jamina Apio, Counsel for the Respondent, the complainant answered "After sometime I realised that the wires had been removed. I don't know who removed them."

It is clear from the above that apart from confirming that the wires to his residence fell and were later taken, the witness did not identify or know the people who took the wires. It remains a matter of conjecture whether the electricity supply was disconnected by the heavy rains or even by third parties; a theory put forward by the Respondent. The issue as to whether the power supply to the complainant was disconnected by the Respondent must therefore be answered in the negative. We cannot in the circumstances of the evidence adduced by either parties state that the disconnection was definitely done by the Respondent. Since we have answered this issue in the negative; the issue as to whether the disconnection was justified or unreasonable does not arise.

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Issue No.3

"Whether the Respondent continued to charge the Complainant for electricity during the period of electricity cut off."

The Complainant testified that the Respondent continued to charge him even when he had no supply. He put in evidence receipts which were admitted and marked CExb1-16.

The Respondent does not deny that it charged the questioned fees but contends that these are standards charges of service fee payable by consumers for the existing meters and other equipment on the premises.

In cross-examination the complainant told this tribunal that the meter remained and it is only the service wires that were taken. He also said the electricity pole remained. Sec. 78 of the Electricity Act states "*Where a supply line or electrical equipment or plant is provided to a consumer by a licensee, the licensee may require a consumer to pay such access fees and other charges for services as may be approved by the authority.*"

We agree with counsel for the Respondent that the fees charged are service fee as contemplated by Sec. 78 of the Electricity Act.

Issue No.4

Whether the Respondent failed and/neglected to restore electric supply to the Complainant.

The submissions of Counsel for the Complainant on this issue is that the Respondent having received the complaint of the complainant in 2007, failed, neglected or refused to restore power till 23<sup>rd</sup> February 2009. He submitted that the actions of the Respondent amounted to negligence.

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In support of her case Ms Nyangoma , Counsel for the Complainant cited the case of **Blyth Vs. Birmingham Water Works [1856] 11 Exch 781** where it was stated "*negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent reasonable man would not do.*" Counsel submitted that the acts of the Respondent merit that description and Respondent was thus negligent.

For her part, Ms. Apio, Counsel for the Respondent faults the complainant for his failure or neglect to report the case till 2009 and further contends that as soon as the Respondent received the complaint from the complainant on **12<sup>th</sup> February 2009**, it took steps to rectify it. In short she submitted that there was no negligence on her client's part.

As regards negligence she adopted the definition in Blyth case (Supra).

The evidence of the parties has been reviewed in the discussion of the issues above.

We are in agreement with both Counsels with regard to the Blyth's case in respect to the definition of negligence. Although Blyth's case is an old English case, the principle quoted therein is an applicable perfect definition of negligence and the same is adopted by this tribunal.

As pointed out earlier in this judgment, it was an agreed fact at the scheduling conference that power was disconnected in 2007. We do not agree with the Respondent's Counsel's submission that the Respondent received the complaint from the complainant on **12<sup>th</sup> February 2009**. There is no basis for such argument. The document referred to "vandalisation line service for Kasajja Thomas "was never admitted in evidence as an exhibit neither was there any evidence from the Respondent to prove that indeed the complainant submitted his complaint on **12<sup>th</sup> February 2012**.

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During cross-examination by Ms Nyangoma Counsel for Complainant; RW1 Mr. Asimiwe testified that the information was data captured from Mr. Kasaijja, the complainant. In further cross examination, he said "I am not the one who received the complaint. I got to know this complaint through my immediate supervisor, operations and maintenance Eng Atto Alex.

In re-examination the witness said "I don't know how the complaint came to Umeme."

In view of the admitted facts, the tribunal is inclined to reject the evidence of the Respondent that the report of a problem with Kasaijja's power supply was on 12<sup>th</sup> February 2009. We accept the facts as admitted that the power was disconnected in 2007. We also accept as a fact that power was restored on in 2009; 2years later.

RW1 had in his evidence informed the Tribunal that even if there is no complaint, the system will detect the fault through a circuit breaker. In view of the admitted fact that the power was disconnected in 2007; it is surprising that Respondent did not detect the fault from 2007 given the capacity it is purported to have and failed and or neglected all along up to 2009 to restore electric supply to the Complainant.

We draw the conclusion that the acts of the Respondent fall squarely in the definition of negligence by definition in Blyth's case Supra and or failure. This issue is therefore answered in the affirmative.

#### Issue No.5

Whether the Respondent acted in undue preference and discrimination in supply of electricity power.

The issue was abandoned by the parties. We respect their position.

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## Issue No.6

### Whether the Complainant has any available remedies?

In his complaint the complainant stated that because his power was cut off he was compelled to use alternative sources of energy e.g hurricane lamp, with paraffin, charcoal and firewood. He also claimed associated losses arising out of using alternative power as well as costs for health hazards of smoke.

In his sworn testimony, he claimed under paragraph 33(h) for an account into the measure of damages caused by disconnection of power supply and under paragraph 33(i) an Order of compensation for the inconvenience suffered by the complainant.

In her submission learned Counsel Nyangoma for the Complainant relied on Art. 126 (2) (c) of the Constitution of Uganda in justification of her client's claim. Art 126 (2) (c) of the constitution states as follows:-

"In adjudicating cases of both civil and criminal nature, the court shall subject to the law, apply the following principles:-

- (a)
- (b)
- (c) adequate compensation shall be awarded to victims of wrongs.

For her part M/s Jamine Apio, Counsel for the Respondent submitted that the Complainant is not entitled to compensation, first because there was no wrongdoing by the Respondent and secondly that the complainant did not submit her complaint in writing as required by regulation 13 (i) of the Electricity (Quality of Services) Regulation. The same states

***"If a consumer has a complaint regarding the licensee's obligations under the Act, These Regulations or any other relevant law, code standard or licence, the consumer may in a case of serious complainant lodge the complaint in writing with the licensee and in other cases verbally to have the complainant solved amicably."***

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We have carefully considered the parties pleadings, the evidence of the complainant and the submissions of both Counsels. <sup>the</sup> Complainant is seeking among others; compensation or actual damages, also known as special damages.

These compensate for proven injury or loss.

It is now trite law that special damages must be specifically pleaded and proved. This position was stated in **MOHANLAL KAKUBHAI RADIA VS WARID TELECOM UGANDA** where Bashija J citing **Kibimba Rice Ltd Vs. Umar Salim SSCA No. 17 OF 1992** stated "*It is also the established law that special damages must be specifically pleaded and strictly proved.*"

Apparently neither in his pleadings or his evidence in chief did the Complainant specifically plead or prove how much he spent on the alternative sources of energy. It is therefore from the outset difficult to know how much the complainant spent on the alternative source of energy. Special damages are such that the same must be specifically pleaded and proved. None of the above was proved and none can in the circumstances be granted.

*to compensate \**  
Art.126 (2) (c) of the Constitution cited by Ms Nyangoma however entitles victims of wrongs committed. The Complainant's power was not restored for 2 years, in this instance.

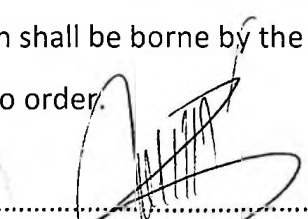
Under prayer (i) of the Complaint; the claimant prays for an order of compensation for the inconvenience suffered by the complainant. Our understanding of the prayer is that the complainant is praying for what is generally called General damages. General damages as was held in **Okello James Vs. Attorney General HCCS No 574 of 2003** are therefore compensatory in nature, and are intended to make good to the sufferer as far as money can do so, the losses or injury he or she suffered as the natural result of the wrong done to him.

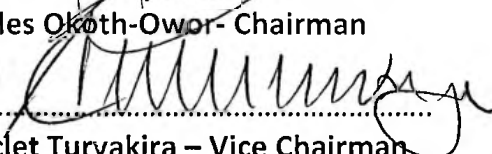
They are intended to cover injuries or losses for which an exact shilling amount cannot be calculated. They are thus subjective, both in nature and determination of value of damages. It is often difficult to calculate or precisely quantify the amount of money necessary to compensate the aggrieved party for general damages. General damages are at the discretion of court and do not need to be specifically claimed. Reference is made to the case of **Adonia Tumusiime & 318 Others Vs. Bushenyi District Local government & Attorney General** where Basheija Andrew J; held that *"The position of the law is that the award of general damages is at the discretion of court."* Sec.109 of the electricity Act enjoins the tribunal to exercise its jurisdiction with all powers of the High Court. We think this power includes the discretion referred to above.

Since we have found that indeed the complainant was denied supply and suffered injury; the acts of the Respondent amount ~~and~~ to negligence, we award shs.1,500,000/= to the complainant as general damages for the damages that flowed naturally from the Respondent's wrongful action.

As regards costs, they follow the event. Since the complainant has been successful on most of the issues but unsuccessful in some, we award him  $\frac{3}{4}$  (three quarters) of the costs which shall be borne by the Respondent.

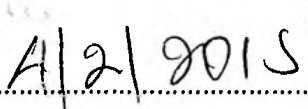
We so order.

  
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Charles Okoth-Owor- Chairman

  
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Anaclet Turyakira – Vice Chairman

  
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Eng. Dr. Moses Musaazi - Member

Date:.....

  
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