

THE REPUBLIC OF UGANDA

THE ELECTRICITY DISPUTES TRIBUNAL

COMPLAINT EDT. NO. 02 OF 2014

KAZIBWE RONALD _____ COMPLAINANT

VERSUS

UMEME LTD _____ RESPONDENT

TRIBUNAL CORAM: -CHARLES OKOTH-OWOR - CHAIRPERSON
 - ANACLET TURyakIRA - VICE CHAIRPERSON
 - MOSES MUSAAZI - MEMBER

JUDGMENT

The Complainant, Kazibwe Ronald (CW1), was represented by Counsel Tumwesigye Lawrence of M/S Tumwesigye, Baingana & Company Advocates while Counsel Allan Baguma from M/s Shonubi, Musoke & Co. Advocates variously represented the Respondent, UMEME LTD, an electricity distribution Company. The issues for determination were as follows:

1. Whether or not the Complainant was guilty of power theft by tampering with or bypassing the energy meter installed by the Respondent?
2. Whether the disconnection of power supply from the Complaint's premises was lawfully done?
3. Whether the confiscation of the Complainant's assets was done by the Respondent and if so whether it was lawful?
4. Whether or not the Complainant is entitled to the remedies sought?

The Complainant sought:

- Special damages of Ug. Shs. 72,000,000/= (Seventy two million) allegedly being gross loss of income during 24 months that he allegedly did not work as a result of his assets being taken away, at the gross rate of Ug. Shs 3,000,000/= per month. The 24 months running from 5th February 2013 to 11th April 2013.
- Special damages of Ug. Shs. 100,000,000/= (one hundred million) allegedly being value of property (damaged/lost).
- Restoration of power supply to the premises.
- A permanent injunction to restrain the Respondent from ever illegally interfering with his power supply or his business.

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- General damages of Ug. Shs. 50,000,000/= (fifty million) for the inconveniences and suffering due to the Respondent's unlawful conduct.
- Costs of the claim

The Respondent on the other hand submitted that the Complainant was not entitled to any remedies from the Respondent, for the reason that the Respondent was only performing its duties in a lawful manner.

The pleadings of the parties show that the Complainant sued the Respondent Company for unlawful disconnection and confiscation of his machinery/equipment related to his business. The Complainant in his evidence and submissions claimed that he operated a metal welding business at Abayita-Ababiri Trading Center on Entebbe Road at the premises of Mr. Henry Kaweesi. The Complainant stated that he was however NOT the registered consumer of electricity thereupon but operated under the name of Kaweesi Henry on meter No. U1215742 and Account No. 200329973. The electricity supplier is UMEME LTD, the Respondent.

He claimed, in his Counsel's written submission, dated 12th February 2016, as follows: (1) That on 21st February 2012, two employees of Umeme Ltd, named Seremba and Magala, went to his workplace, disconnected the power supply because of an alleged unpaid balance of UGX 254,578 and also took the energy meter away. This action is evidenced by the Disconnection Order dated the same day and was admitted in evidence as CE3. He claimed that this surprised him since he had just paid UGX 100,000 and his receipt showed a negative balance of UGX -35,234.44. He claimed that despite showing them the respective receipt, dated 21st February 2012, they went ahead and disconnected the power supply. (2) He further states that the following day, 22nd February 2012, when he followed up at Umeme office in Entebbe town a different allegation was instead brought against him. He was told that he had tampered with the meter. However, upon meter testing by their official, Paul Asiimwe, the meter was confirmed not to have been tampered with. Asiimwe then ordered that it be reinstalled where it had been removed. (3) He alleged that the Umeme officials, who had disconnected the power supply, asked for a bribe of UGX 500,000 so as reconnect the supply. The same people had earlier insisted that the meter was faulty but when the contrary was found, they changed the allegation to "meter bypass". He alleges that this change is self-evident on the Disconnection Order where the words "caught bypassing meter" were added later on to the original allegation of "unpaid balance". (4) He further stated that his refusal to succumb to the demand for a bribe earned him a fraud bill of UGX 810,736 that was put on his account and his power supply was subsequently disconnected in July 2012.

The Respondent on the part agreed that the Complainant, who operated a metal welding business at Abayita-Ababiri Trading Centre on Entebbe Road, was being

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supplied with power by Umeme Limited on Account Number 200329973 and meter number U1215742 but in the name of Henry Kaweesi. On several incidences, The Respondent's team discovered that the Complainant was engaged in a number of meter bypass malpractices during the period February 2012 and March 2013. To make matters worse, he would reconnect himself to supply after being disconnected by the Respondent. In the effort to stop the malpractices, the Respondent relocated the meter from the Complainant's premise to a nearby electricity pole and secured it in a lockable plastic box. But subsequently, the box was however vandalized by breaking the seals and padlocks. In a further effort to better secure the meter, it was put in a metallic box and the Complaint power supply was left disconnected on 15/1/2013. The Respondent stated that during a joint operation by Umeme and the police to stamp out illegal power connections on 23/1/2013; they found the metallic box vandalized and the Complainant's power supply restored. When attempting to disconnect him at time, the Complainant and his workers turned violent. The police took the action of confiscating some of his machinery and tools and constituted a case against him (Abayita-Ababiri S/D 37/23/02/2013).

The Complainant, Ronald Kazibwe(CW1), testified that all accusations against him were false: He had never vandalized the Umeme equipment (meter boxes) or bypassed the energy meter. Neither his workers nor himself had ever been violent to Umeme staff. He alleged that on 22/2/2007 some employees of Umeme (Sseremba and Magala) one time came to disconnect his supply due to an alleged outstanding bill of UGX 254,578. He stated that despite his explanation that he had just paid UGX 100,000 and that his receipt showed a negative balance of UGX 35,234 (-35,234), they disconnected his supply and took the meter away. He went to Umeme offices in Entebbe town and made a further deposit of UGX 160,000. His new receipt showed a negative balance of UGX 195,524 (-195,524), {CE2, CE3} Since his balance was negative, he demanded reconnection. Consequently, the Umeme Metering Engineer ordered Sseremba and Magala to give him the meter for testing. When the meter was tested and found without fault, it was re-installed. But before the meter re-installation, Seremba and Magala demanded a bribe of UGX 500,000 claiming that the money was to be shared between several people (Harriet, etc.); but he refused. Two months after the meter re-installation, the Complainant received a bill of UGX 810,736 (CE1) that was stated to be "Energy Loss on A/C 200329973". He believed that this was an unfair billing and followed up the matter at the Umeme Entebbe offices on 16/8/2012 and reported to the Umeme District Manager (DM). (The report, reference as "Unfair Billing", was tendered in as exhibit number CE6). In the report he explained the whole situation (including the history of the purported faulty meter, unpaid arrears and bribery, etc.) that culminated into the fraud bill UGX 810,736. The DM told him that she would respond at a later date after studying his report. The DM responded by a letter to him referenced as MIM/EBB/1/27/08/2012 (RE: Fraud Bill 235245807). He states that he disagreed with what was in DM's report including repeated meter bypass and self-reconnection. He also refused to agree to a payment plan of the fraud bill proposed by the DM. But he contends that despite his refusal, he was left on

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supply for an extra year. He alleges that the next action by Umeme was a year later, and precisely on 22/2/2013, when a Umeme team disconnected his power and took their service cable (solidal). In addition, Umeme took away his business machinery that included a welding machine, grinder, switches and a toolbox that had UGX 1,800,000 in it. In addition, Umeme officials raided his home and took their meter and service cable and personal antennas. Umeme did not provide any document indicating the list of the confiscated items. So, on 26/2/2013, he wrote a complaining letter to the Umeme General Manager and copied it to DM (Entebbe), ERA, etc. On 28/2/2013, Ms. Stella Nkini Ndiwalana (Program Manager-MD's Office) wrote back to him advising him to return to the DM (Entebbe) for action. He informed the Tribunal that, instead, he contacted his area MP (Hon. Balikuddembe) seeking his advice. The MP wrote a letter to ERA on 19/3/2013 seeking further assistance on the matter. On 9/4/2013, ERA replied the MP's letter promising to investigate the matter and take appropriate action. In the same response, ERA drew the attention of the MP to Umeme's report in respect of the same matter.

Under cross-examination by Counsel for the Respondent, the Complainant stated that he had witnesses to the request for a bribe by Seremba of UGX 500,000. The witnesses were Lukyamuzi, Deo and Samuel Deocheng who are employees of Umeme. He further stated that in the first instance, on 25/2/2012, they wanted to disconnect his supply due to arrears of about UGX 250,000. But he also agreed that in his complaint, there is no mention of arrears.

When shown Exhibit 1 (CEX 1) entitled "Direct Connection- Meter bypass", the Complainant agreed that he knows it.

The Complainant also agreed that Umeme officials were with the police when his machinery and equipment were confiscated and taken away. He mentioned several people who were with him on the scene and reaffirmed that the property was taken without any written document.

The Complainant further agreed that there were correspondences letters, emails and phone calls, initiated by himself, between Umeme Entebbe District (Miriam Musinguzi), Umeme Head Office (Stella Ndiwalana), Area Member of Parliament (Hon. J. Balikuddembe), and Electricity Regulatory Authority (Catherine Nabongo), but there were no reports to either further investigations or conclusion of the matter.

The Complainant was tasked by the Respondent's counsel over the claim estimates he made: (1) Damaged and confiscated machinery; UGX 100,000,000. (2) Loss of business income for 24 months; UGX 72,000,000. (3) Compensation for inconvenience and suffering; UGX 50,000,000. The claim was due to the economical suffering caused by the departure of his tenants when his welding business was disrupted and he resorted to farming instead. When asked how his tenants were connected to the welding business, he could not clarify. He stated that he neither had receipts nor audited books of accounts to substantiate his claims.

When questioned if he followed up his confiscated property with the police, the complainant stated that he did with Entebbe Police Station where he was given a reference number S/D 37/23/02/2013 and it was entitled "Theft Complaint by

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Kazibwe Ronald". He stated that when he tried to follow up the matter later on, he was told that the officials were changed (moved to other police stations).

When the Complainant was re-examined by his own counsel, he clarified that he has two separate accounts with Umeme: (1) The business at Abayita-Ababiri (Account 200329973 with meter number U121572). (2) The home account at Kabaale-Kayise (Account 200855450 with meter number U112643).

Mr. Joseph Kasenge (CW2) gave evidence of having been present on the day when Umeme and the police came to the Complainant's workshop using Umeme pickup. He alleges that on that day (Saturday afternoon in February 2013), he had gone to borrow some welding machinery (grinder) from the Complainant as a business associate in similar trade. He claims to have witnessed the whole exercise of confiscating the Complainant's machinery and other property by Umeme and the Police. He added that the Complainant was present at the beginning of the exercise, but was absent at the end of it. Finally, he stated that he later on heard that the Complainant had reported the matter to the Police.

Ms. Miriam Ndagire Misinguzi, the then District Manager of UMEME-Entebbe, who appeared as the second Respondent's witness ("RW2") on the other hand testified as follows:

1. She was the Umeme District Manager-Entebbe during the period the Complainant's case was brought to her attention.
2. She met the Complainant in her office whose written complaint (letter dated 16th August 2012) was overbilling. She responded in writing (letter dated 27th August 2012; REX1) clarifying that charge was "Fraud bill" due to meter bypass but NOT due to meter tampering. This was by the Disconnection Notice dated 21st February 2012.
3. In the same letter she stated the history of the Complainants meter bypass and self-reconnection as: (1) The Complainant supply was disconnected in February 2012, as per Disconnection Notice dated 21st February 2012, due to a meter bypass and was given a fine of 102 units. (2) On 18th July 2012, a similar bypass was found when the Complainant was tapping power directly from the Umeme circuit breaker. This prompted Umeme to relocate the meter unto their pole and secured inside a lockable box. (3) The Complainant was later on disconnected for non-payment. But on 27th August 2012, he was found on supply but without a Reconnection Order, which implied self-reconnection.
4. In the same letter, the Complainant was given a stern warning against meter bypassing and self-reconnection. He was advised to request for payment plan to settle the outstanding balance.

As a good gesture, the Complainant was reconnected but with the meter relocated up on a Umeme Electric pole and locked inside a plastic box. A Umeme engineer was specifically asked to monitor the consumption of the Complainant. Immediately, the consumption went up but after some days, it dropped again. On visiting the premise, Umeme staff found the plastic box broken and the padlock tampered with and stuffed with *Super Glue*. In order to improve the meter's security, Umeme staff replaced the box with a metallic one. Once again, the

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Complainant's consumption initially went up and then dropped. Another inspection by Umeme found, once again, that the metallic box was also broken. But prior to finding the metallic box tampered with, the Complainant had been disconnected due to non-payment and failure to agree to a repayment plan. Therefore, when Umeme found the metallic box tampered with and the Complainant on supply, Umeme decided to disconnect him. However, this time the Complainant turned violent as he resisted disconnection of the power supply. Subsequently, Umeme decided to engage the Police in an exercise that covered an area including the Complainant's premise. In the process of disconnecting the Complainant, he turned violent, with the assistance of his workers, and tried to resist the action. The police provided security to the Umeme staff and the disconnection was effected. The police decided to confiscate some of his machinery and equipment as a result of his violent action. The property was taken into police custody and a case reference was given to Umeme. Afterwards, the Manager was asked by Umeme Head Office and ERA to provide a report on the saga. She responded by emails and explained the situation and the history of the problem [See REX1]. Thereafter, she was transferred to another Umeme location (Kabalagala).

Using the evidence of REX1, RW2 (Miriam Musinguzi) showed how the Complainant's consumption had a pattern of sudden changes as follows: (1) August 2012; consumption shoots up from an average of 29 to 249 units per month (2) In September 2012 the average consumption dropped to 79 units (3) Then it shot to over 200 units in October 2012. The two sudden increases in consumption were immediately after securing the meter into the plastic and then metallic boxes while the drops are after the boxes are broken into. RW1, referred to the photos taken that showed the broken boxes, tampered wiring, super-glued padlock and the respective meter (inside the broken metallic/plastic box).

Mr. John Paul Assiimwe (RW1), who was at the incident time the Commercial Losses Supervisor-Entebbe Branch, testified that he knew the Complainant as a Umeme consumer whose welding business was located at Abayita-Ababiri (Entebbe Road). He took some photos of a meter that had been bypassed, and as supervisor, he was involved in the administrative decisions to relocate the meter unto an electric pole and secure it into a plastic box which was later on vandalized Umeme replaced a metallic one both of which were found subsequently broken into and power flowing into the Complainant's workshop. In both incidences, the power was accessed illegally. He reported the matter to the DM (RW2) who handed the issue at a higher level. He also heard of further actions where a joint effort with the police led to the confiscation of the Complainant's items.

On cross-examination by Counsel for the Complainant, RW1 explained how a meter bypass is checked without necessarily testing it in a laboratory. He testified that the Complainant's meter was variably locked inside the plastic box or the metallic one. He admitted that he was not part of the operation team(s) that visited the Complainant's premises, but as a supervisor, he received reports and

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took action accordingly. He also admitted that he did not know what and why the Complainant's items were confiscated but he remembers seeing a list of them.

We, the Tribunal, have on our part carefully considered the pleadings, testimonies of and other evidences of the respective parties and also considered their respective written submissions.

The Tribunal framed the four issues of the parties as stated herein before.

We will consider the first issue; i.e. as to: "Whether the Complainant was guilty of power theft by tampering with or bypassing the meter"

It is not in dispute that the Complainant was a customer of the Respondent consuming electricity through Meter No. U1215742, under Customer Number 200329973 in the name of Mr. Kaweesi Henry (his landlord).

It is also not in dispute that the Respondent disconnected the Complainant's power on 23rd February 2013 during a joint operation by Umeme and the Police to curb illegal power connections in the area of Abayita-Ababiri.

It is also not in dispute that prior to the final power disconnection (on 23rd February 2013) there had been earlier disconnections of the same power supply to the Complainant. It is also undisputed that the Complainant had had formal communications (and meetings) with the District Manager, Umeme-Entebbe (RW2) about the issues in respect of the disconnections.

It is undisputable that Umeme moved the Complainant's meter from the original place at the Complainant's site to an electricity supply pole and inside a lockable box.

Under Section Regulation 17 (3) of **The Electricity (Primary Grid Code 2003) Regulations** "**Service may be disconnected for any of the following reasons.... (e) Tampering with or bypassing the licensee's meter or equipment**"

The Tribunal was satisfied with the evidence provided by the Respondent's witnesses (RW1 & RW2) that in more than one incident the Complainant was guilty of consuming unmetered power by bypassing the licensee's (Umeme's) meter. The Complainant's energy consumption patterns (REX1) and the disconnection notices (REX 1) collaborated well with the Respondent's claims. The Complainant did not avail any counter the Respondent's claims and explain his continued access to power when he was formally disconnected. Instead, the Complainant bases all his evidence on the fact that the meter was not tampered with. It is not in dispute that the said meter was not tampered with but this does not mean it was not bypassed.

The Tribunal appreciated the fact that when Umeme first relocated the Complainant's meter, it was placed into a box together with other consumers' meters. Any other consumer could have therefore vandalized the box! However, subsequent to the locking up of the meters and vandalizing of the boxes, the Complainant's energy consumption pattern showed sharp rises and then sharp

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drops; a fact consistent with energy theft by the Complainant. The Complainant neither denied consuming energy when he was formally disconnected nor offered an explanation as to how he came to be consuming energy when he was disconnected nor as to what could have been happening repeatedly to the boxes in which his meter was repeatedly locked and vandalized.

The Tribunal is of the opinion that although the Complainant may not have tampered with the meter itself, he was bypassing it and consuming energy which, by the patterns of consumption was unmetered during the periods of bypass. We are not in doubt that vandalism of the plastic and metallic boxes was to facilitate the bypassing of the meter so that the electricity consumed by the Complainant at his workshop would be unmetered or largely unmetered. This goes against **Regulations 5.1 (e) of The Electricity (Primary Grid Code 2003) "A consumer shall not bypass, or allow electricity supplied to the supply address to bypass the meter"** It is our conclusion that the Complainant offended this Regulation and we conclude that the Complainant bypassed or allowed electricity that bypassed a meter that was installed to measure the electrical energy supplied to his workshop.

The second issue "Whether the disconnection of power supply from the Complainant's premises was rightful"

Under **Regulations 6.6.1 (c) of The Electricity (Primary Grid Code 2003)"Where a consumer has obtained supply otherwise than as permitted by this Code, the licensee may take action in accordance with Part 15.0 to disconnect the supply to the consumer's premises"** The Tribunal found that since Respondent was satisfied with evidence confirming meter bypass by the Complainant, it was rightful of the Respondent to disconnect the power supply from the Complainant's premises.

Let us now deal with Issue 3: "Whether the confiscation of the Complainant's assets was done by the Respondent and if so whether it was lawful"

While it's not in dispute that some of the Complainant's property was confiscated on that day of 23rd February 2013 during the exercise by the Umeme and the Police, the Complainant contends that he pursued the matter later on and the Police gave him a Reference Number S/D 37/23/02/2013. The burden of proof laid on him to provide the details of the Reference or his pursuance of the matter with the Police to ascertain who actually confiscated his property. The Complainant himself (CW1) was absent while the property was being confiscated. His only witness (CW2) who claimed to have been around during the confiscation time neither provided any details as to which of the two parties (Police or Umeme) confiscated the property. We are unable to state that the Respondent's servants confiscated or did not confiscate the Complainant's property.

We can now deal with the final issue (Issue 4): Remedies

The Tribunal will deal with each claim as follows:

Remedy 1: *UGX 100,000,000 as being the value of the properties damaged/confiscated.* The Tribunal is satisfied that the Complainant has no claim to make from the Respondent. He would need to pursue this as a case with the police since he has a reference number.

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Remedy 2: UGX 72,000,000 as being loss of business income for period of 24 months when his assets were taken away. The Tribunal believes that this item is directly linked to Remedy 1. The Complainant cannot prove that the Respondent confiscated his property; hence he cannot hold the Respondent for any business loss incurred.

Remedy 3: UGX 50,000,000 as being compensation (general damages) for all the inconveniences and suffering due to the Respondent's unlawful conduct. The Tribunal was satisfied that the Complainant's power supply was lawfully disconnected. Therefore, any inconvenience suffered in this regard was self-inflicted by consuming energy unlawfully.

Remedy 4: The Respondent should restore power supply to the Complainant's premises. Since the Tribunal was satisfied that the Respondent disconnected the Complainant's power supply due to unlawful usage, the power supply should be restored only when the Complainant conforms to the law.

Remedy 5: A permanent injunction issue against the Respondent to restrain them or their officers/servants from ever illegally interfering with the Complainant's power supply or with his business. The Tribunal holds that the Respondent acted legally and hence this request does not hold any point.

The Tribunal has not found it necessary to delve into other matters raised by the parties, some of them not having been pleaded and have not been proved.

In regard to costs of the claim, the Tribunal has considered all aspects and decided that each party meets its own costs.

We so Order.

Dated at Kampala this 23rd day of August 2010



Chairperson



Vice Chairperson



Member