

THE REPUBLIC OF UGANDA
ELECTRICITY DISPUTES TRIBUNAL (PROCEDURE) RULES, 2012
APPLICATION NO.EDT/07 OF 2015 ARISING FROM HCCS NO.534 OF 2012

IN THE MATTER OF

MAKUBUYA E. WILLIAM
T/A POLLA PLAST **COMPLAINANT**

VERSUS

UMEME (U) LTD **RESPONDENT**

RULING

This case file was referred to the Tribunal by the High Court for purposes of appointing a valuation surveyor to determine the amount of compensation payable to the Complainant.

The mandate is contained in clause 7 of the Decree which states;

“The valuation surveyor shall be appointed by the EDT to determine the dispute as to the amount of compensation payable under Section 77 of the electricity Act, 1999 Cap.145, in the absence of an agreement of the parties to the appointment.”

The decree by the High Court was issued on 27th February 2015. The decree and file were forwarded to the tribunal on 22nd April 2015 by a letter written by the plaintiff’s (now complainant’s) lawyers M/s Anguria, Aogon & Co. Advocates. It was copied to the Registrar High Court, Commercial Division and M/s Shonubi Musoke & Co. Advocates.

We think it was irregular for the file to be forwarded by the advocates and not the Registrar. However, given that there has been no objection by the Registrar and M/s Shonubi Musoke & Co. Advocates to whom the letter was copied, the irregularity is not fatal to the process.

Upon receipt of the file and letter, the parties were summoned to the tribunal to appear i.e. Mr. Anguria Counsel for the Complainant, Mr. Gimanga Counsel for the Respondent and Mr. Mukubuya Claimant. By consent, the parties were given time to “talk” and report to the tribunal on 25th August 2015.

When the parties appeared on 25th August, 2015 they again requested for more time to discuss. They were obliged, and by consent directed to meet on 16th September 2015 at 11.00Am at Rwenzori House the premises of the Respondent.

In the event the parties did not conclude their discussion, they would meet on 22nd September, 2015 at the same venue. They were to report to the tribunal on 7th October 2015.

When the matter came up on 7th October, 2015, the tribunal was informed that the Respondent had changed instructions from M/s Anguria, Aogon & Co. Advocates to M/s Lukwago & Co. Advocates who at the hearing were represented by Mr. Segona. It is to be noted that Mr. Segona had at the previous hearing appeared with Mr. Anguria. Mr. Gimanga still represented the Applicant/Respondent.

At this hearing, Mr. Segona informed the tribunal that the meetings did not take place as arranged. He prayed that since the meetings which were meant to resolve the issue of valuation and appointment of a valuation surveyor had not taken place, the tribunal should go ahead either to appoint the valuer or determine the value in accordance with the decree. Mr. Gimanga did not agree. He submitted that the previously agreed meetings had not taken place because of the interim order issued on 25th August 2015 and extended on 6th September, 2015 that stayed the proceedings in the Tribunal.

Mr. Segona on the other hand contended that the said interim order did not stay these proceedings. He said the proceedings in the tribunal are for determining the value of the machines and that according to him this cannot come within the provisions of 0.22 Rule 1

of CPR on stay of execution. He contended that since the Respondent had not filed an application for execution, there is no eminent danger of execution.

We have carefully listened to the arguments of both parties. As pointed out, this matter was referred to the tribunal under clause 7 of the Decree which for emphasis we re-state here;

“That a valuation surveyor shall be appointed by the EDT to determine the dispute as to the amount of compensation payable under Sec. 77 (10) of the Electricity Act, in absence of an agreement of the parties to the appointment.”

This was also necessary to fulfill clause 8 of the decree namely “That the defendant pays the plaintiff general damages of 20% of the amount assessed by EDT.

In his judgment Hon. Justice Christopher Madrama Izame had directed *“A valuation surveyor shall be appointed by the Electricity Disputes Tribunal according to her mandate to determine disputes as to amount of compensation payable under Sec.77 (10) of the Electricity Act, 1999 Cap. 145, in the absence of an agreement of the parties to the application.”* It is therefore clear from above that our mandate is to appoint a valuation surveyor agreed upon or in the absence of agreement by the parties to appoint one. That is the nature of the proceedings in the tribunal.

However, the consent interim order issued on 25th August, 2015 and referred to by Mr. Gimanga was issued to stay execution by *“restraining both parties, their servants, agents, assigns or successors from executing the judgment and decree of the High Court Commercial Division entered on the 9th day of February and 27th day of February 2015 respectively until 25th September, 2015.”*

The issue to resolve is whether or not the stay extends to the proceedings before the tribunal.

Ordger's Concise Law Dictionary 6th Edition by John Broke defines execution as *"the act of completing or carrying into effect, particularly of a judgment, effected by writs of execution, orders and notices which compel the defendant to do or pay what has been adjudged."* Execution is also defined as *"implementation, carrying out, completing, finishing, effecting and putting to death, e.t.c."*

The free Dictionary defines stay of execution as an order where judgment is precluded from being executed for a period of time. **The English dictionary** defines stay of execution as *"an order by court to temporarily stop action on an earlier court decision being carried out."*

In our view, determining or appointing a valuation surveyor in this respect is implementation of or carrying out, effecting or carrying into effect the judgment and decree of the High Court, which acts are part of the decree (para 7) which were stayed by a consent of parties by order of 25th August 2015 and extended till 23rd November, 2015.

Mr. Segona did contend that the interpretation by Mr. Gimanga on execution was being overstretched. In our opinion, clause (7) of the decree is the one that gave the tribunal mandate to determine, and it is that decree and judgment whose execution is being stayed.

We do not think that that order saved para (7). We believe and state that the decree was stayed in toto. We can only respect the will of the parties which was reduced into a consent order for stay till the time granted in the order.

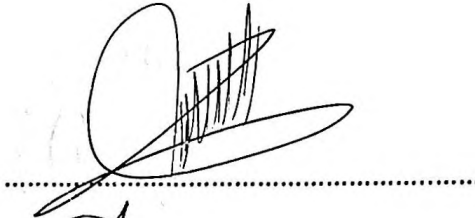
That being the case, it is our order that these proceedings be stayed in accordance with the order of the High Court as contained in the interim order.

It is so ordered.

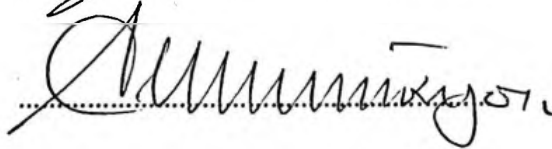
Dated at Kampala this ^{17th}.....day of *November*, 2015.

Signed:

Charles Okoth Owor



Anaclet Turyakira



Eng. Dr. Moses Musaazi

