

THE REPUBLIC OF UGANDA
THE ELECTRICITY DISPUTES TRIBUNAL

Complaint No. EDT 06 of 2014

MUSISI DAVID MASERUKA

VS

UMEME LTD

RULING

The Electricity Disputes Tribunal sat to proceed with the above matter on 08th July 2015. The complainant, on record, one **MUSISI DAVID MASERUKA**, was represented by **Counsel FRANK AINE**. The Respondent, **UMEME LTD**, was represented by **Counsel PRICILLA NAMUSIKWE**.

Counsel Namusikwe, raised a preliminary point of objection, her objection was that in law, **Maseruka David Musisi**, the complainant on record did not have *locus stardi*, to bring and prosecute the matter before the tribunal.

She advanced the following grounds to support her objection:

A holder of power off Attorney; such as Maseruka David Musisi held himself out to be, can only take out proceedings in the name of the donor of the Power of Attorney.

An attorney is only an agent, thus has no right of action in his own name. She argued that Maseruka David Musisi could not therefore bring this action in his own name.

She also contested the validity of the power of attorney dated 14th July 2014 by which one **Sebaggala Mohammed**, proprietor of land comprised in Kyandondo Block 208 Plot 3833 at Kawempe and owner of the UMEME customer accounts threat, nominated **MUSISI DAVID MASERUKA** as his Attorney and empowered him in his names and on his behalf to among others, "proceed with electricity Disputes Complaint No. 6 of 2014"she argued among others that:

The purported signature of the donor (Ssebagala Mohammed) as appears on the said power of attorney materially differed from that of Sebaggala

Mohammed as appears in the Passport attached to the power of attorney among other documents. She cited the case of **Uganda Vs Kitembo Moses in the Anti-Corruption Division. Criminal Session case No 22 of 2014** which in principle stated that; a Court has discretion to examine signatures which are in dispute to prove their genuineness. She submitted that the above case, the judge upon exercising the said discretion and examining the signatures of a witness on different document, declared that, there was such a huge and glaring difference and it did not require a handwriting expert to see the difference between the signatures. He concluded that the signature on the power of attorney was forged.

Counsel invited the tribunal to examine the signatures as appear in the passport and that on the power of attorney and draw the conclusion of a forgery of the power of attorney on account of glaring dissimilarity of the signatures.

She also argued that the Power of Attorney in issue was signed on **14th July 2014** yet a copy of Mr. Sebaggala's flight ticket to London Heathrow Airport showed that he arrived in Uganda on **23rd May 2014** and was to depart from Entebbe to Heathrow on **6th July 2014**, and there was no evidence that he re-scheduled his flight out of Uganda to later date. She argued that this raised the issue as to whether Sebaggala signed the power of Attorney in Uganda on 14th July 2014 when he was to have left the country on 6th July 2014 and if at all the Power of Attorney was commissioned in Sebaggala's physical presence. She pointed out that the power of attorney in issue did not state in the jurat at what place and date the commissioner for Oaths witnessed the signing of the power of attorney. She argued that the above act violated Section 6 of the Oaths Act. Cap 19. Likewise that the fact that the power of Attorney was apparently commissioned in the absence of the purported donor, violated Rule 7 of the Commissioner for Oaths before witnessing the taking of an Oath to satisfy himself that the person named as the deponent and that is before him is the same person and is fit to understand what he is doing. She cited the case of **Mohammed Majyambere Vs Bhakresa Khalil H.C M.A 727 of 2011** to support her argument. Although the above case was in respect of an affidavit; she drew an analogy to it to support her prayer that the purported power of attorney granting Maseruka David Musinguzi authority was consequently and

accordingly defective and incurable, and ought to be struck out. Her subsequent arguments went to re-affirm the above positions.

On the other hand, Counsel Frank Aine for the Complainant majorly argued among others, that the Tribunal is not to be bound by technicalities or rules of procedure and may waive or apply rules of procedure with modifications, so as to enable a matter be considered on its merits. The matter of the parties was according to him, a procedural issue, which the tribunal can address and allow the matter to proceed.

The tribunal considered as a whole all the arguments of both Counsel as presented and recorded in the record of proceedings as to whether Maseruka David Musisi did or did not have *locus standi* in this matter, so as to lodge and prosecute this complaint.

The view of the tribunal is that the case of **M/s Ayigihugu & Co. Advocates Vs Muteteri Munyankindi (1988- 1990) HCB 161** is very clear on this matter. Tsekooko Ag. J as he then was is reported in the above High Court Bulletin to have stated the principle that; *“A holder of a power of attorney ought to take proceedings in the name of the owner of the property, the donee of an attorney has no right of action. A judgment deciding the rights of parties cannot be based on a Plaintiff who shows no cause of action”*

The preliminary objection raised by Counsel Namusikwe falls squarely within this principle and Musisi David Maseruka as an attorney cannot take out proceedings and prosecute in his own name in this matter. In that respect, the preliminary objection by Counsel Namusikwe is sustainable.

The tribunal on the hand is aware that on 4th July 2014; Mr. Mohammed Sebagala appeared in person before the tribunal and identified himself as the proprietor of the land and developments (the building) on Block 208 Plot 3833 Kyadondo at Kawempe, and the Electricity maters, which are on it which are partly the subject matter off this dispute. The tribunal also recalls that this complaint had originally been brought also in the name of Nalubwama Building. It also recalls that Mr. Sebagala clearly but orally stated that Maseruka was his agent, acting on his behalf in the matter.

The tribunals then advised Mr. Sebagala that neither Nalubwama’s Building nor Musisi David Maseruka as a manager have legal capacity to institute the complaint.

He was advised to validly constitute Musisi David Maseruka into his attorney with authority in Sebaggal's name and on his behalf to manage his affairs including powers to use and defend suits, as such attorney.

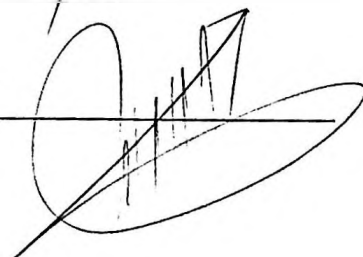
Mr. Allan Baguma, then Counsel for the Respondent agreed with the advice given to Mr. Sebaggala Mohammed. Mr. Sebaggala accepted the advice and promised to so constitute Mr. Musisi David Maseruka into such an attorney. Unfortunately the document furnished to the tribunal dated 14th July 2014 by which Mohammed Sebaggala is purported to have granted authority to Maseruka cannot stand; the reasons are clearly argued by Counsel Pricilla Namusikwe, and the tribunal agrees with her. The document cannot be relied upon by the tribunal as rightful authority from Mr. Mohammed Sebaggala.

The tribunal does however wish to vail every person with a complaint, an opportunity to put forward their case and its merits determined after listening to both parties. The tribunal also has cognisance of the fact that neither Musisi David Maseruka nor Mr. Mohammed Sebaggala are lawyers and that up to 8th July 2015 they had no services of a Counsel and were self-represented, and thus possibly, not aware of the procedural errors. In addition, we wish to avoid a multiplicity of suits. Accordingly, the tribunal is inclined to give them the opportunity to correct failures that do exist in the presentation of this complaint, in light of Rule 40 of the Electricity Disputes tribunal (Procedure), Rules 2012 and in our belief that errors and defects identified were bonafide mistakes borne out of ignorance on the part of both Mr. Musisi David Maseruka, and Mr. Sebaggala but in the name of Musisi David Maseruka as if he was the complainant is accordingly struck off and Counsel for the Complainant will subsequently take steps to make necessary amendments to the pleadings so that the matter is adjudicated upon on its merits.

Dated this 14th day of Sept 2015

Charles O. K. M. Adu

Chairperson



Aracet Timpakira

Vice Chairperson

Chumungu

NOES KIZZA MUSANDZI

Member

DEMUSANDZI