

THE REPUBLIC OF UGANDA
THE ELECTRICITY DISPUTES TRIBUNAL
COMPLAINT EDT. NO. 4 OF 2013

NDYABANAWE JOHNSON _____ COMPLAINANT

VERSUS

UMEME LTD _____ RESPONDENT

TRIBUNAL CORAM: -CHARLES OKOTH-OWOR - CHAIRPERSON
- ANACLET TURYAKIRA - VICE CHAIRPERSON
-ENG. Dr. MOSES MUSAAZI - MEMBER

JUDGMENT

The Complainant Ndyabanawe Johnson (CW1), was represented by Counsel, Reverend Ezra Bikangaso while the Respondent UMEME LTD, an electricity distribution Company was variously represented at different times by Counsels Allan Baguma, Byabazaire Naomi and Andrew Bwengye from M/s Shonubi, Musoke & Co. Advocates. The issues for determination were as follows:

1. Whether or not the Complainant's electricity supply was lawfully disconnected by the Respondent and subsequently lawfully reconnected?
2. Whether or not the Complainant is entitled to the remedies sought?

The Complainant sought:

- Special damages of Ug Shs 52,800,000/= (Fifty two million eight hundred thousand) allegedly being gross loss of income during 66 days that he allegedly did not work as a result of wrongful disconnection, at the gross rate of UG Shs 800,000/= per day. The 66 days running from 5th February 2013 to 11th April 2013.



- : Shs 3,150,000/= allegedly paid to Process Servers to file and serve documents on the Electricity Disputes Tribunal (the tribunal) in Kampala.
 - : Shs 3,500,000/= allegedly paid to a mechanic who travelled to Kabale to inspect and service the Complainant's machines which were rendered out of service because of the disconnection of electricity.
- General Damages and
 - 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. The Complainant in his evidence and submissions claimed that he operated a timber sawing business in Kabale Municipality from a building on Plot 44 Kigongi "A" Zone which he rented from one Manzi George Banyu. The Complainant was however the registered consumer of electricity thereupon on a meter No. U204011. The electricity supplier is UMEME LTD, the Respondent.

He claimed in his Counsel's written submission dated 8th April 2015 that one Yasin Matsiko (RW3); an employee of the Respondent in the course of his employment with the Respondent came on 5th February 2013 and unlawfully disconnected the electricity supply to his business premises. He claimed that this was done without a disconnection order as required by law. He claimed in his testimony before the tribunal not to have had a bad relationship with his landlord, George Manzi. He claimed that the Respondent reconnected his power supply on 11th April 2013, and without giving him a re-connection order or notice to that effect. In the Complainant's view this was wrongful and unlawful. He claimed that the disconnection caused him loss of business, goodwill and financial loss.

The Respondent on the other hand claimed to have disconnected the Complainant's supply for safety reasons, following a complaint received from George Manzi, the Complainant's landlord that the Complainant was threatening to kill him using electricity. The Respondent's submission was that, upon completion of investigations into the matter, and finding that



the alleged threat no longer existed, reconnected the Complainant's electric supply. The reconnection was alleged effected after two weeks from the date of disconnection i.e. 19th February 2013.

The Complainant Johnson Ndyabawe (CWI) testified that he had no dues owing to UMEME at the time he was disconnected. He stated that he was given a "disconnection notice" dated 5/02/2013 only at the moment of disconnection, with the verbal reason that the landlord had told the Respondent to disconnect him. He claimed not to have had a bad relationship with his landlord and that there were no hanging wires or electricity problem in the area including the transformer that supplied the area.

He claimed that he was earning a gross of Ug Shs 800,000/= per day from his timber business and that was the daily loss he had suffered during the period he was disconnected. He testified that UMEME did not respond to his verbal and written complaints over the disconnection and he eventually wrote to Electricity Regulatory Authority (ERA) to complain about UMEME's action (The letter dated 8th April 2013, written by Bikangaso & Co. Advocates bore a received stamp of ERA dated 9th April 2013); Exhibit "PE1". He claimed that UMEME only reconnected his power supply on 11th April 2013 after his lawyer made a complaint to ERA. He claimed that the Respondent therefore denied him the opportunity to work for 66 days. He also claimed that he had incurred expenses to bring a mechanic one Nzireeta Moses (CW2) from Kampala to service his machines after the reconnection of supply, so as to render them operational and that to render them operational, he had even to buy some spare parts, a process which cost him a total of Ug Shs 3,500,000/=.

Perpetua Kyarisima, An administrative Manager of UMEME at Kabale who appeared as Respondent's witness ("RW1"). on the other hand testified that as a matter of Company policy if there is any safety concern brought to the attention by any one of sound mind, it is taken seriously by the Respondent and electricity is immediately disconnected. She further testified that in such instance, all parties to be affected are informed before the disconnection. She testified that the consumer/s would remain disconnected until the safety issue is resolved to the satisfaction of the Respondent.

She testified that a Landlord can report to the Respondent a safety concern and the Respondent would respond to it as it would respond to any safety report made by any concerned party.



The tribunal found that it is in no doubt that the Complainant was a consumer of electricity supplied by the Respondent which was metered through a meter No. U201411 in his name. It is also not in dispute that the Complainant was a tenant on a building on Plot 44 Kigongi "A" Kabale Municipality which was owned by one George Banyu Manzi; who allegedly reported to the Respondent the safety threat. It is also not in dispute that the Complainant was running a timber business from the said rented premises.

Both parties agree that the Respondent's servant one Yasin Matsiko who testified as "RW3", acting in the course of his employment disconnected electricity supply to the Complainant's business premises on 5th February 2013. Complainant asserted that he had duly paid his bills to the Respondent and that there was no justifiable cause to disconnect his power supply. He claimed, that as result of the disconnection, he lost Ug Shs 800,000/= per day from his operation, this being his gross earnings per day when he would work. He claimed that he was only reconnected on 11th April 2013.

The Respondent on the other hand asserted that in response to a report from one George Manzi; the Complainant's landlord and neighbor, that supply of electricity to the Complainant posed a threat to the safety of other neighbors (paragraph 6(a) of the Reply to Claim) they had disconnected the power supply to the Complainant. Matsiko Yasin a network Auditor with the Respondent; RW3 testified that he was directed by his supervisor to proceed to Kigongi and disconnect the Complainant. He testified that on 05/02/2013 he went with a notice to consumer and explained to the Complainant the reason for the disconnection that he was to effect. He thereafter wrote out particulars of the notice to disconnect and gave it to the Complainant and then disconnected the power. He claimed that his supervisor had briefed him that the disconnection was for safety reasons. In cross examination; he stated that he reconnected the Complainant, on 5th or 6th March 2013 but atleast two weeks later, at the directive of his supervisor who made him to understand that the safety issue between the Complainant and Banyu had been resolved. He testified that he did not give to Johnson Ndyabanawe any document upon making the reconnection.

The Respondent's witness Johnson Mwase RW2 testified that he directed the disconnection of the Complaint's power following a written complaint by George Banyu Manzi, the Complainant's landlord who reported to him on 05th February 2013 in his office that there was an imminent danger to his life and his family; from the Complainant who allegedly was threatening to use electricity to kill him. He asserted that he instructed Matsiko (RW3) to



disconnect using a notice to consumer which was to indicate or state as follows

"irregularities which don't conform to UMEME regulations").

He claimed that the Complainant called the next day upon which he advised him to come with the Landlord George Manzi so that the case could be reviewed. He claimed that the Complainant never returned, although Manzi came two days later to thank RW2 for having saved his life.

He testified that the Complainant was disconnected for only two weeks as investigations were going on. He claimed to have contacted the Regional Police Commander, who allegedly informed him that the Police was aware of the conflict between Manzi and Johnson Ndyabanawe, the Complainant. He stated that he did not know whether the conflict was ever resolved although the Police told him that it was safe, whereupon he directed the reconnection of the power. He insisted that his only motive for disconnection was the safety of the occupants of and property in the building from which the Complainant was operating. He affirmed that no reconnection order was issued to the Complainant upon power being reconnected, and in his view it was not the practice to issue such a notice in cases where the disconnection had been for reasons other than failure to pay bills.

One Lillian Tayebwa, who appeared as Complainant's witness "CW3" testified that she was a cashier at the Complainant's business where she had worked for 5 years. She testified that the Complainant has a timber workshop called "*Congress workshop*" from which a gross income of between Ug Shs 650,000/= to Ug Shs 800,000/= was being received daily at the material time. She testified that the machines at the workshop use electricity supplied by the Respondent. She testified that UMEME reconnected the workshop on 11th April 2013. She claimed that no notice of disconnection was served upon the business prior to the disconnection.

One Obed Akwansa, a trader in Kabale testified as "CW4" and stated that about the 11th April 2013, as he went about his business, buying ground nuts from a shop opposite the Complainant's workshop at Kigongi: Kabale; he witnessed three UMEME staff arriving and connecting power from a pole to a wire that went to the workshop. He claimed that Ndyabanawe, the Complainant thereafter came out of the workshop and informed him among other people that he had been disconnected for 2 months.

Complainant also presented one Zireeta Moses "CW2" who claimed to be a self employed mechanic, residing at Kavule, Kibuye Makindye Division. He claimed to know the Complainant, having met him in Ndeeba as both



looked for spares. They struck a friendship. He claimed that about September 2013; the Complainant invited him to Kabale to service his timber workshop machines. He stated that he proceeded to Kabale and serviced these machines, which included change of belts, bearings and greasing. He stated that he found the machines, not in a good working condition and had been idle and that the Complaint's workshop had no electricity at the time.

In cross examination "CW2" stated that he is a self employed technician but at the material time he was only a porter in a workshop and that the workshop from which he operated has several independent operators and that he serviced the machines in Kabale after July 2013 but most probably in September 2013 or towards the end of 2013. He claimed that the Complainant was to have paid to him a total of Ug Shs 3.5M/= but at the time of testifying had paid to him only Ug Shs 2M/= and the rest had since been paid in small installments with a balance of Ug Shs 100,000/= still outstanding.

He stated that he had no evidence and trading license for the type of work that he was engaged in. He also said he did not have receipts to support the payment of Ug Shs 3.5M/= that he received from the complainant and reiterated that there was no power at the complainant's premises when he arrived to service the machines towards the end of 2013.

We 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 two issues of the parties as stated herein before.

We will consider the first issue; i.e. as to whether the Respondent lawfully disconnected and subsequently reconnected the Complainant's electricity supply. It is not in dispute that the Complainant was a customer of the Respondent consuming electricity through Meter No. U204011, in his names. It is also not in dispute that he was a tenant of one Manzi George, who is described by the Respondent as a neighbor of the Complainant. It is also not in dispute that the Respondent disconnected the Complainant's power on 05th February 2013 following a report from the said Landlord to the Respondent's officers, to the effect that the Complainant was threatening to kill him by the use of electricity/or that supply of electricity to the Complainant posed a threat to the safety of the other neighbor.

The law as stated in the ***The Electricity (Quality of Service Code) Regulations, 2003 S 1 2003 No. 21; Regulation 17 (3) (d)*** is that



“Service may be disconnected without notice where a dangerous condition exists for as long as the condition exists;”

Regulation 15:3 of The Electricity (Primary Grid Code) Regulations, deals with Disconnection of supply. Regulation 15.3.1 thereof states that “.....a licensee may disconnect or interrupt supply to a customer’s supply address for reasons of health or safety”. From the above, we surmise that a distribution Company and for that matter UMEME Ltd, the Respondent herein may interrupt supply to a consumer at any time for reasons of health and safety or a dangerous condition exists. What we find in the case before us is that one Manzi George was the Complainant’s Landlord. We also find that the Respondent’s Consumer in respect of Meter No. U204011 which was disconnected by the Respondent on 05th February 2013 was Ndyabanawe Johnson, the Complainant, and not Manzi George, the Landlord.

The reason for the disconnection as stated by the Respondent to the Complainant and repeated before the Tribunal by all the Respondents’ witnesses was that the disconnection was due to a safety threat; the threat having been reported by Manzi George, the landlord.

The question that arises was whether the Respondent can be said to have found or come across the existence of a safety threat to justify the disconnection on 05th February 2013, and for that matter and an imminent threat to safety. Apart from the complaint allegedly made by the Landlord, who in any case was not called to testify before the tribunal, there was no evidence brought of broken hanging wires or loose cables or of any means by which the alleged imminent safety threat to Mr. Manzi or neighbors was demonstrated to exist. No evidence was furnished to the tribunal to show that at the time the disconnection was carried out, a dangerous condition existed or of any means or signs that such a danger to the safety of the Landlord and his family or to anyone existed. Indeed none of the Respondent’s witnesses described the nature and outcome of the investigations carried out to determine the existence and or non existence of the alleged threat, or to resolve the issue of the alleged threat to the safety of the neighbors, including Manzi. Manzi himself was never brought to testify.

In the circumstances, we conclude that there appeared to be no justifiable and lawful reasons to disconnect the Complainant’s power supply. The Respondent failed to show that supply of electricity to the Complainant’s rented premises in any way posed an immediate threat of injury or material damage to Mr. Manzi and his family who may have been occupying part of the building in question or to the neighbors. As earlier stated, Mr. Manzi



was not even presented to testify before the tribunal as to the existence then of the alleged threat.

Regulations 15.3.2 of The Electricity (Primary Grid Code 2003) also provide to the effect that; except in the case of an emergency, or where there is need to reduce the risk of fire; the Respondent is not to disconnect the customer unless it has given the consumer written notice of the problem and is to reconnect supply as soon as possible. In this instance, it is difficult to state that the Complainant was given an effective notice; given the fact that a reason was written on a document given to him only at the moment that he was being disconnected, with no time to respond to it. We cannot also state that an emergency existed for the reasons; that no conditions that can be described as an emergency were demonstrated to the tribunal to exist or that a risk of fire existed at the time of disconnection. On the other hand witnesses for both parties stated that everything appeared to be in order. The conclusion is that the complainant was unlawfully disconnected; there being no demonstrable threat or emergency reason and no effective notice given to him.

The Respondent claims that upon carrying out further investigations, it found that the police had handled the matter and the electricity was reconnected. The Police was never brought to testify on this claim and their alleged findings. The Respondent claims to have reconnected power to the Complainant after **two (2) weeks** from 05th February 2013. The Complainant on other hand claims that power was reconnected on **11th April 2013**, and without a reconnection order or any notice to that effect. It is our finding that there was no reconnection order/notice issued, which appears to be rather irregular, considering that the supply was switched off for purported safety reasons. This in our opinion called for a report or written explanation of the findings and a formal re-connection order/notice; so that the matter of the alleged safety threat is put to a conclusive end. It is curious that the Respondent Company could not by way of evidence of resumption of consumption of electricity or bills show when the Complainant could have been reconnected and or resumed consumption. This information and record should be available with the Respondent. Such information could have given the tribunal an idea as to when the reconnection took place! The fact that the Respondent chose not to present this evidence may be a pointer to the fact that reconnection of supply to Complainant indeed took place long after 19th February 2013, the date on which the Respondent claims to have re-connected the power. We are not very convinced that without more information being availed as to when the Complainant resumed consumption; we can agree that the Complainant was reconnected on 19th February 2013; more so that the Respondent's witness Yassin Matsiko who carried out the reconnection



stated that he recalls reconnecting supply on 5th or 6th March 2013, which to him was two weeks after disconnecting the supply.

We are on the other hand inclined to believe that the reconnection was made long after 05th February 2013 and probably on 11th April 2013 as claimed by the Complainant. Our conclusion in respect of the first issue is that the Respondent unjustifiably and unlawfully disconnected the Complainant's power supply and later after an unreasonable delay of time surreptitiously reconnected the Complainant's power supply, without any evidence/documentation being left behind that could show when this took place.

This unreasonable delay was also contrary to the stipulation of the Electricity Primary Grid Code which requires an electricity distributor of the like of the Respondent to ensure that the duration of interruptions to the supply of electricity to consumers is held at minimum. 05th February 2013 to 11th April 2013 is an unreasonably long period within which to have established the veracity and degree of the alleged safety threat to Manzi and or neighbors and to take the decision to restore power. The spirit throughout of the Electricity Primary Grid Code Regulations is that the licensee shall use its best endeavours to restore the consumer's supply as quickly as possible; e.g. 7.2.1; 9.5.2; 15.2.2(b). This spirit is not reflected in the conduct of the Respondent. The Respondent did not also follow the procedures before disconnection as provided in Regulation 15.3.2. of the Primary Grid Code Regulations 2003 even when it tried to appear like it was serving a notice but in any case it also took unreasonably long to reconnect the supply in the circumstances of this case.

The Claimant in his claim dated 6th May 2013 seeks Special and General Damages and costs of the claim.

Special damages pleaded were:

- Ug Shs 800,000/= per day as salary for Claimant from 02nd February to 11th April 2013; i.e. Ug Shs 49,000,000/=.
- Ug Shs 2,000,000/= professional fees paid to Bikangisho & Co. Advocates.
- Ug Shs 8,000,000/= paid by Customers to the Claimant which he had to refund.
- Ug Shs 3,500,000/= paid to service machines which were idle.



The Respondent denied that the Claimant was entitled to any special and general damages and further that the Complainant had suffered any substantial loss, business and good will.

The issue here is whether the Complainant/Claimant (Ndyanabawe Johnson) is entitled to the damages that he seeks from the tribunal; damages being one of the forms of relief or remedies.

Damages is understood to be compensation in monetary terms and to refer to the amount of money which the person suing may be awarded for loss or injury sustained by the Claimant at the instance of the defendant. General damages have variously been defined as; "such as the law will presume to be the direct natural or probable consequence of the action complained of (*Stroms Bruks Aktie Bolog Vs Hutchinson (1905) A.C 515*)

General damages are subjective both in nature and determination of value. They are said to be compensatory in nature in that they should offer some satisfaction to the injured party and are said to focus on the conduct of the Defendant in causing the injury that is being compensated for:- Refer to *URA V. WANUME DAVID (2012) HCB Vol. 1 page 43*. One may not specifically plead or prove them.

Special damages on the other hand are said to be such as the law will not infer from the nature of the act (*Stroms Bruks Aktie Bolag V. Hutchinson above*). These consist of all items of loss which must be specified or pleaded before they may be proved or recovered; the damage suffered must be of a kind which is not the necessary and immediate consequence of the wrongful act but which were actually caused by the injury. They must be fully and specifically pleaded/claimed and proved.

We have concluded that the Respondent Company unlawfully disconnected the Claimant's electricity supply in that there appeared to be no emergency or dangerous condition demonstrated by the Respondent, to exist so as to be covered by Regulation 15.2.1 of the Primary Grid Code 2003 or Reg. 17.2(d) of the Quality of Service Code 2003. There also appeared to be no reasons of health and safety to justify a disconnection. There were no broken hanging wires or rotten poles reported or sighted or any means of causing injury or material damage to any person or property shown to exist. Matsiko Yasin (RW2) the Respondents employee who disconnected the electricity supply on 5th February 2013 actually testified that he found nothing wrong with their cables and the meter.



There is also no evidence of any investigation carried out by the Respondent to establish the existence of any threat of injury or material damage to any person or property. Indeed Johnson Mwase, RW2. The Respondent's operations and maintenance engineer, for Kabale and Kisoro District and the person who directed the disconnection told the tribunal that he did not know whether the conflict between the Complainant (Ndyabanawe) and Manzi who reported the purported threat was ever resolved. He added that he nevertheless conclude that it was safe to restore power on 19th February 2013!

We have prior to this point concluded that the Respondent took an unduly unreasonable period to re-connect the Complainant; Exhibit "PE 1" admitted in evidence at the instance of the Complainant stated that by the 8th April 2013, the Complainant still had no power. This is the letter written by Complainant's Counsel dated 8th April 2013 to the Electricity Regulatory Authority (ERA) and received by the latter on 9th April 2013. The content thereof was not disputed by the Respondent. It is therefore relatively safe for us to conclude, that the Respondent did not reconnect power on 19th February 2013 as it claims but on a later date, and probably on 11th April 2013. This may explain the absence of a re-connection notice in spite of the very long period of disconnection and the failure to demonstrate on the part of the Respondent when the Complainant's power was restored.

In light of above; the Complainant would on the face of it be entitled to the remedies that he seeks. We however find it hard to award with the exception of the fees of Ug Shs 2,000,000/= paid to the Advocates the special damages sought as per paragraph 11(a) to (d) of the Claimant's claim. Save therefore for the claim for Shs 2,000,000/= paid as professional fees to M/s Bikangiso & Co. Advocates and evidenced by a copy of a receipt dated 08th April 2013 for the said sum we are of the opinion that other items claimed were not specifically proved but remained mere allegations. No credible and conclusive evidence was in our opinion brought forward to support these claims.

There were no proof that the Claimant received a daily salary of Ug Shs 800,000/= at the time, nor that he had already earned Shs 8,000,000/= which he refunded because he could not complete works paid for. The claim for Shs 3,500,000/=, being money allegedly paid to one Nzireeta Moses "CW2"; an allegedly self employed mechanic who allegedly serviced the Complainant's machines was not entirely believable. He could not show that he was ever paid by the Complainant for the alleged services. He claimed he arrived in Kabale to service the Complainant's machines in



September or October 2013, at most towards the end of 2013, and that at the time, the Complainant's workshop still had no electricity supply. We however had been told by the Complainant himself that his power supply was restored in April 2013. CW2 later in re-examination, stated that he was only a porter in a workshop in Kampala during the period he allegedly serviced the Complainant's machines in Kabale.

Save for the Shs 2,000,000/= paid to the Complainant's Lawyers, no special damages will be awarded, for failure to prove these claims.

The tribunal however recognizes that the Respondent's wrongful acts in unjustifiably disconnecting and taking unjustifiably and unduly long to reconnect the Claimant's power must have caused suffering, loss of goodwill, and inconvenience to the Claimant.

After considering all these aspects and the suffering and inconveniences that he must have undergone as a result thereof, we award him general damages of Shs 5,000,000/=; Special damages of Shs 2,000,000/= as stated herein before and costs of this suit, which may be agreed or in the event of failure to agree be taxed by the Registrar of the Tribunal.

We have not found it necessary for our decision to delve into other matters raised by the parties, some of them not having been pleaded in any case.

We so Order.

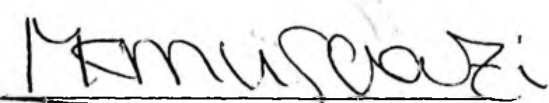
Dated at Kampala this 21 day of December 2015



Chairperson



Vice Chairperson



Member