

**THE REPUBLIC OF UGANDA**  
**THE ELECTRICITY DISPUTES TRIBUNAL OF UGANDA**  
**AND**  
**THE ELECTRICITY ACT CAP 145**  
**AND**  
**THE ELECTRICITY DISPUTES TRIBUNAL (PROCEDURE) RULES, 2012**  
**MISC. APPLICATION NO.005 OF 2016**  
**(Arising out of Complaint No.EDT/06 of 2014)**


**MUHAMMED SEBAGGALA (SUING THROUGH  
MUSISI DAVID MASERUKA HOLDER OF  
POWER OF ATTORNEY .....APPLICANT/COMPLAINANT**  
**VERSUS**  
**UMEME LIMITED ..... RESPONDENT**  
*(Before Mr. Charles Okoth Owor, Mr. Anacleth Turyakira and Mr. Moses Musaazi)*

**RULING**

This application is brought under Electricity Disputes Tribunal (Procedure) Rules S1 53 of 2012, 06 Rule 19 and 31 of the Civil Procedure Rules S1. 71-1 and Sec.98 of the Civil Procedure Act seeking leave of this honorable tribunal to amend Complaint No.EDT/06 of 2014.

The grounds for the application are inter alia

- (i) that the amendments are necessary for presenting the applicant's claim with sufficient clarity,
- (ii) that the complaint in its current state lacks some relevant information which if not included will prejudice the applicant's claim.
- (iii) that the complaint in its current state lacks some relevant information which if not included will prejudice the applicant's claim
- (iv) that the amendments sought by the applicant are necessary for purposes of determining the real questions in controversy between the parties and to ensure that justice is done.

  
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- (v) that the Respondent will not suffer injustice or irreparable harm by the proposed amendment.
- (vi) that it is in the interest of justice that the applicant be allowed to amend the complaint.

The application is supported by the affidavit of Musisi Maseruka, the appointed attorney of the applicant.

We shall deal with the details of the affidavit later in our ruling.

The Respondent, through one Byrd Ssebuliba, filed an affidavit in reply whose detail we shall delve into later in our ruling; suffice to say the Respondent opposes the Application.

When the matter came up for hearing on 31/8/2016; Ms Zawedde, Counsel for the complainant sought to withdraw an earlier amended complaint No. 6 of 2014 filed on 9<sup>th</sup> Dec. 2015, to pave way for this application. Since the Respondent's Counsel did not oppose the withdraw of the amended complaint No.6/2014, the same was by consent of the parties withdrawn.

It is important to point out that the original complaint was filed in the names of Nalubwama's Building, a business owned by Mr. Muhammed Sebagala the Complainant. Later the names Nalubwama Building was changed to Musisi, David Maseruka, the lawful Attorney for Mr. Sebagala. Upon objection by Priscila Namusikwe, Counsel for the Respondent and upon appearance before the tribunal on 4<sup>th</sup> July 2014 by Mr. Muhammed Sebagala, and confirmation by the said Sebagala that Musisi was his attorney, this tribunal directed that the names Musisi David Maseruka be substituted with the names of the owner of the property Muhammed Sebagala and Musisi as his lawful attorney. Accordingly, an amended complaint in the names of Muhammed Sebagala was filed on 9<sup>th</sup> Dec.2015 by the complainant's lawyers Odekel Opolot & Co. Advocates.

On 21<sup>st</sup> April 2016 the firm M/s DN Kabugo Advocates took over the conduct of the matter on behalf of the complainant. Upon taking up the matter, the said lawyers again sought to further amend the complaint hence this application.

While presenting the application Ms Zawedde counsel for the complainant argued that the application should be allowed because the amendment sought was to enable the complainant present his case with sufficient clarity. She relied on the case of GASO TRANSPORT SERVICES (Bus) LTD Vs. Obura [1990-94]1 EA. 88 cited with approval in OKIDI..... Misc App. No.90/2016 which according to her set up principles that guide courts in its discretion as to whether or not to allow an amendment.

She also contended that the application should be allowed to avoid multiplicity of suits. She further argued that the application should be allowed because it was not prohibited by law, it was not brought in bad faith, does not cause any injustice and is intended to enable the tribunal to determine the real questions in controversy. She relied on the facts as detailed in the supporting affidavit of Mr. David Musisi Maseruka.

Mr. Baguma Alan, counsel for the respondent, strongly objected to the application. He contended that the application offends the rules of procedure because the draft amended complaint does not disclose by underlining which items are to be amended. Mr. Baguma argued that while fraud was introduced in the amendment, no particulars of fraud were underlined. He argued that because of the failure by the complainant to underline the amendment, it is difficult for the tribunal to determine what was added or subtracted to the original complaint.

He relied on the case of Pascal Rwakahanda Vs. UPTC HCCS NO.484/2014 where Musota J observed "*it is well known rule of procedure and respected rule of practice that additions to a pleading on amendments have to be underlined. Deletions are on the other hand stricken through as failure to do so usually misleads court.*"

The other objection by Mr. Baguma is that the amended complaint has the effect of introducing a new cause of action which in his view offends the principles of amendment. He relied on the case of Matagale Vincent Vs. URA Misc App. No.025/2013 where Obura J, rejected the amendment by holding "*that the proposed amendment seeks to introduce two new causes of action namely; negligence and fraudulent concealment that were never pleaded in the original plaint. Allowing such an amendment that introduces a distinct new cause of action would therefore be contrary to the principles that govern amendment of pleadings.*"

Mr. Baguma objected to the introduction of pleadings of negligence and fraud with the resultant claim for compensation which had not been previously pleaded.

The last objection by Mr. Baguma is that the application to amend was inordinately delayed. He relied on 0.12 rule 3 & 1 of CPR and contended that the amendment should have been brought within 21 days. He said the amendment was brought after four months.

In rejoinder, Ms Zawedde denied that the amendment had introduced any new cause of action. She argued that what had been done was to expound on the original complaint by giving further and better particulars.

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She argued that no new issues or facts had been introduced and that the character and substance of the complaint had not been changed. She referred us to the case of Musisi Kiwanuka Vs. Asha C.A. 14

On the issue of underlining Ms Zawedde contended that the cases cited by counsel for the respondent had been cited out of contest because the issue of underlining or not underlining was never the basis of the ruling in Pascal Rwakahanda's case (Supra).

She said that the intended amended complainant was not capable of causing any confusion to the tribunal. She also denied there was any delay as the issue of amendment was always brought to the attention of the tribunal even before the formal application.

We shall proceed to resolve the objections.

The law on amendments is well set in the case of GASO TRANSPORT SERVICE LTD VS MARTHA ODULE-OBURE where Tsekooko JSC set down the principles that govern courts in allowing or disallowing amendments. He said

*"The following principles appear to be recognized as governing the exercise of discretion in allowing amendments:-*

1. *The amendment should not work injustice to the other side. An injury which can be compensated by the award of costs is not treated as injustice.*
2. *Multiplicity of proceedings should be avoided as far as possible and all amendment which avoid such multiplicity should be allowed.*
3. *An application which is made malafide should not be granted.*
4. *No amendment should be allowed where it is expressly or impliedly prohibited by any law."*

Earlier in the judgment the learned judge cited **0.VI rule 18** (now 19) and quoting **AIR Commentaries on the Code of civil Procedure** where the learned authors state

*" The rule gives a wide discretion to the court to allow amendments necessary for the purpose of determining the real matter in controversy between the parties."*

It is clear from the above that courts and tribunals alike have the discretion to allow amendments. The exercise of this discretion must however be judicial. The guiding principles for this discretion are that amendments should not work injustice to the

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other side, should be for purpose of avoiding multiplicity of suits and must not be prohibited by law.

The second objection by Mr. Baguma is that by introducing fraud and negligence with the resulting claim for compensation, the complainant had introduced a new cause of action which offends the rules of amendment of actions.

In her response, Ms Zawedde contends that no new cause of action has been introduced, as there are no new facts or issues. She argued that what has been done was only to expound in the pleadings to provide further and better particulars which did not change the substance and character of the original claim.

To resolve the above objection, it is important/necessary to look at the original claim vis avis the amended one.

In the original complaint/Appeal filed on 26/3/2014, the complainant in the particulars of complaint lists the following;

- (1) Unfair/wrongful disconnection of power.
- (2) We spent 7 years requesting Umeme Ltd to rectify mistakes which was done internationally.
- (3) Causing our business to lose money
- (4) Making forged and inflated bills on our account.
- (5) Taking our Solidos and failure to recover/return them yet they serve more than 8 meters.
- (6) Wrongful levy of fraud charges.

At that time the issues were

- (1) Whether disconnection is justified.
- (2) Whether **fraud** of Shs. 649,553 and Shs.132,729 is justified.

It is important to note that this complaint was filed by the complainant who was at that time unrepresented.

In the amended complaint filed on 9<sup>th</sup> Dec. 2015 and under para 3(f)-(j) the complainant alleged **fraudulent** billing on the part of the Respondent and under (k) provided the **particulars of fraud**. In para (m) the complainant claimed special damages of shs.2,400,000.

In the prayers the complaint among other prayers sought orders for

(a)



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- (b) Declaration that the respondent's acts were **fraudulent, illegal** and a violation of complainant's property rights.
- (c) **Compensation** for shs.144,000 for losses incurred.
- (d)

In the amendment being sought, the prayers are;

- (a) A declaration that the respondent's acts were **fraudulent, illegal** and a violation of the complainant's property right,
- (b) **Compensation** of Shs.144,000
- (c) General and special damages
- (d) Punitive and exemplary damages
- (e) Costs.

The issues are

- (i) Whether the Respondent is liable
- (ii) What are the remedies of the parties?

It is clear from the above that there was a complaint in respect to an alleged fraud and claim for compensation right from the beginning.

\* We therefore respectfully agree with Ms Zawedde that there is no new cause of action being introduced, and the character and substance of the complainant is still the same. The objection by Mr. Baguma on this point is overruled.

The 3<sup>rd</sup> objection is that there was delay in bringing the amendment for four months. It is clear from our records that the issue of amendment of the complaint has been before the tribunal at almost all appearances. What seemed to be the problem was whether the same was to be granted orally and or by consent of parties or the complainant needed to formally apply. The other problem seemed to be what happens to the previous amended complaint, an issue that was resolved when the parties consented to the withdraw of the previous amendment thereby paving way for the instant application.

Given the above, we are unable to agree with Mr. Baguma that there was any inordinate delay that should disentitle the complainant from amending his complaint.

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The last objection by Mr. Baguma was that the intended amendments were not underlined and that this was likely to cause confusion to the tribunal. He relied on the case of Pascal Rwakahanda Misc. App. No.484 of 2014 where Musota J also cited the case Pless (TTY) Ltd Vs. Mutoni Construction Ltd, Miscellaneous App. No.178 of 2011 (Arising from HCCS No.131 of 2010 where Mulyagonja J held "*it is a well known and respected role of practice that additions to pleadings on amendment have to be underlined. Deletions are on the other hand stricken through and failure to do this usually misleads court... This is likely to cause injustice to the respondent.*"

As pointed out by the learned Judge, the requirement to underline is merely a good rule of practice. However, rules of practice are not cast in stone. Whether or not the failure to underline will cause injustice depends on the circumstances of each case.

In the Pascal Rwakahanda's supra, the failure to underline was not the only reason the amendment was refused. In that case the applicant had adduced his evidence and been cross examined. There was no draft amendment and the amendment was being sought after 14 years which was likely to deprive the defendant of the defence of limitation.

That the non-underlining of the amendments was not the sole cause of disallowing the amendments can be seen in the concluding remarks of the Hon. Justice Musota when he said "*Consequently leave to amend the plaint at this late point in time will be refused. **The application is dismissed with costs.***"

It is clear from the above therefore that rejection of the amendment in that case was not solely on failure to underline but a combination of factors.

Article 126 2(e) of the Constitution states "*in adjudicating cases of both a civil and criminal nature the courts shall subject to the law, apply the following principles:*"

- (a)
- (b)
- (c)
- (d)
- \* (e) "*Substantive justice shall be administered without undue regard to technicalities.*"

There are a host of cases arising from this article and supplementary to the common law principle that the rules of procedure were intended to be *hand maidens of justice*, not to defeat it. (See Kandal Vs. Hamilton [1878]4 AC 504 at 525); where it was held that "*procedure is but a machinery of the law, a channel and means where it is administered and justice reached.*"

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*It strangely departs from its proper office when instead of facilitating, it is permitted to obstruct and even extinguish legal rights and thus made to govern when it ought to subserve."*

It appears that parliament must have been live to the above provision of the constitution and the common law principles when in their wisdom they enacted **Sec.111 (4) of the Electricity Act 1999** which set up the tribunal and states "*the tribunal shall conduct its proceedings without procedural technicality but shall observe the rules of natural justice.*"

Following the above section, the rules of this tribunal also provide under **Rule 40** that "*the tribunal is, in the resolution of complaints and disputes under these rules not bound by technicalities or legal rules of procedure and may waive any rules or procedural requirements.*"

It is clear from the above provisions of the constitution, the act and the rules of this tribunal that in the determination of complaints and disputes the tribunal is guided by the rules of natural justice. The only limitation is when non compliance with such rules has the potential to cause injustice to the opposite party. This position is amplified in the case of **Cropper Smith [1883]26 Ch.D. 700 at 711** and cited in the case of GASO where it was stated by Bowen I J that "*It is well established principle that the object of the courts is to decide the rights of the parties and not punish them for mistakes they make in the conduct of their cases by deciding otherwise in accordance with their rights...*"

Later in the judgment, the learned Judge further held "*It seems to me that as soon as it appears that the way in which the party had framed his case will not lead to the decision of the real matter in controversy, it is as much a matter on his part to have it corrected if it can be done without injustice as anything else is a matter of right.*"

As pointed out above it is for the tribunal to decide whether or not non-compliance with the rules shall cause injustice to the opposite party in which case the party seeking to amend shall be denied the opportunity to. Each case will depend on its circumstances.

Upon review of the facts and the law in this case, we do not think that the failure by complainant to underline the amendments will cause confusion or injustice to the respondent. On the contrary we think it would be a travesty of justice to deny the complainant the intended amendments if he thinks that such amendments will assist the tribunal in the resolution of the matters in controversy.

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We also think that the amendment should be allowed to prevent future complaints on the same subject matter.

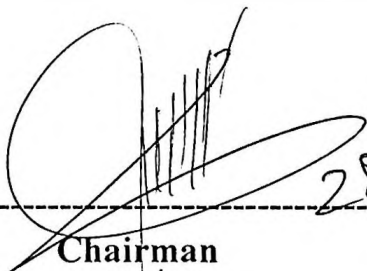
Since we have already resolved the other objections in the negative, it follows that the application by the complainant to amend the complaint succeeds.

In the result we make the following orders:-

- (1) The complainant's application No.005 of 2016 to amend Complaint No.EDT/06 of 2014 is allowed.
- (2) The complaint is given 5(five) days from the date of this ruling to file and serve his amended complaint.
- (3) The Respondent shall have 7(seven) days in which to file and serve its response.
- (4) The complainant shall if necessary file his rejoinder in 3(three) days.
- (5) The parties shall thereafter file witness statements by 4<sup>th</sup> November, 2016 and the case will be heard at a date to be determined by the tribunal.

We so order.

**Charles Okoth Owor**

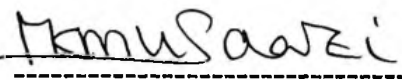
  
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Chairman

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**Anaclet Turyakira**

  
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Vice Chairman

**Moses Musaazi**

  
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Member