

THE REPUBLIC OF UGANDA
IN THE ELECTRICITY DISPUTES TRIBUNAL
AT KAMPALA

COMPLAINT EDT NO. 19/2014

KWESIGA VIVIAN ::::::::::::::::::::::::::::::COMPLAINANT

VERSUS

1. UEDCL 2. Attorney General 3. The Liquidator, UEB.	}	::::::::::::::::::::: RESPONDENTS
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BEFORE:

- 1. Charles Okoth- Owor.....Chairperson**
- 2. Anaclet Turyakira.....Vice Chairperson**
- 3. Eng. Dr. Terry Kahuma.....Member**

JUDGEMENT

The Complainant brought this Complaint in December 2014 against the Respondents seeking compensation for the construction of a 33KV power supply line over their property comprised in plot 193 Block 3 Ndorwa Kabale, which the Complainant jointly owns with Siima Roy and Demetria Rukuba.

The 1st Respondent filed a defence to the Complaint wherein it denied having constructed the power line complained of. On 28th February 2018, the 1st Respondent filed Chamber summons seeking to add the Official Receiver/Liquidator of Uganda Electricity Board and Attorney General as Co-Respondents in order to enable the Tribunal to effectively and completely

adjudicate upon and settle all questions involved in the Complaint. The Tribunal granted the Application and added the Official Receiver /Liquidator of Uganda Electricity Board and Attorney General as Co-Respondents in this matter.

The Parties filed a Joint Scheduling Memorandum in the following terms:

- (i) The Complaint together with Siima Roy and Demetria Rukuba are joint owners of a developed property comprised in plot 193, Block 3- Ndorwa Kabale.
- (ii) In 1997, the Uganda Electricity Board (UEB) constructed a 33KV power supply line over the Complainant's above said property.
- (iii) That the line constructed over the property are medium voltage lines which poses a potential risk to the occupants of the property.
- (iv) That the Uganda Electricity Board was put in Receivership and under the *Public Enterprises Reform and Divestiture Act (vesting of undertaking of Uganda Electricity Board), No. 28 of 2002*, the power line distribution network of the then Uganda Electricity Board was transferred to the 1st Respondent (UEDCL).
- (v) The power line has since construction remained operational.

The following were disagreed facts:

1. That the lines constructed over the property are high voltage lines which pose a grave danger to any other human activity on the property.
2. That the liability attaching to the electricity supply lines constructed over the property of the Complainant is amongst the assets and liabilities that were transferred to the 1st Respondent upon the liquidation of the Uganda Electricity Board.
3. That the 2nd Respondent (Attorney General) is liable for all Government legal liabilities and omitted to provide for certain liabilities of UEB. Any stranded liabilities of UEB are the responsibility of Government.

The Parties agreed upon the following issues, for determination of the Tribunal:

- i. Whether the *Public Enterprise Reform and Divestiture Act (Vesting of Undertaking of Uganda Electricity Board), No. 28 of 2002* vested the liability of the line over the Claimant's property to the 1st Respondent, or the same remained the liability of the Uganda Electricity Board (in Liquidation)?
- ii. Whether the claim is barred by prescription?
- iii. What are the remedies the Claimant is entitled to?

As may be recalled at the beginning of the trial, the issue of whether the claim is barred by prescription was considered by way of a preliminary objection to the claim and dismissed, and no party consequently submitted on this matter in their final submissions, thus only two issues were left for the Tribunal's determination.

It was the Complainant's case that in the year 1997 the then Uganda Electricity Board constructed a 33KV power supply lines over their property without notification, consent or compensation. It was also the Complainant's case that for the foregoing reasons, the property developed with a four-bedroom Bungalow complete with servant's quarters was condemned as being unfit for human habitation due to the existing high voltage lines over the property. The Complainant further claimed that all these years, their property remained unutilized due to the high voltage lines which led to the condemnation of the property. Complainant presented two witnesses in the persons of Hon. Stephen Bamwanga, a Land Valuation surveyor and Mr. John Musungu, a Land Surveyor, to confirm the existence of a power line over the Complainant's property; and to give the value of the Complainant's property affected. The Complainant further asserted that his evidence was corroborated by Mr. Frankline Oidu, RW1, a witness called by the 1st Respondent, in that the said witness in his testimony, confirmed that: -

- (1) The Complainant/ Claimant is a Project Affected Person.
- (2) The line Complained of was constructed in 1997 and is currently operational and delivers power from Kabale to Katuna, and is owned and operated by the 1st Respondent.
- (3) There is no record that the Claimant has ever been compensated.

Complainant argued that **Article 26 of the 1995 Constitution and Sections 9, and 55 of the Electricity Act, Cap 144 (1964 Revision)**, the law obtaining at the time of construction of the line over their property, provided for compensation to a proprietor

where one's property or interest in or right over property is compulsorily acquired, as stipulated by the Constitution and, payment for property damaged in the course of establishing lines, in the case of *Cap 144 laws of Uganda (1964)*. Complainant sought special damages of **Shs. 260,336,900/=** out of which **Shs. 216,336,900/=** is for the value of the Claimant's property affected by the line and way leaves and **Shs. 44,000,000/=** being rentable value of the property at **Shs. 300,000/=** per month from September 2003 to the date of judgement. The Complainant also sought a sum of **Shs. 150,000,000/=** as compensation in general damages on account of;

- (i) Interference with the quiet and peaceful possession/enjoyment of his property by the 1st Respondent's predecessor.
- (ii) The inconvenience to the Complainant in establishing alternative residence.
- (iii) General inconvenience to the Complainant in being deprived use of his property from 1997 to date.
- (iv) The General conduct of the 1st Respondent in refusing to pay any compensation while at the same time taking benefit of the Complainant's property and conducting its business on the said property.

The Complainant also sought costs and interest on the decretal sum till payment shall have been made in full. The Complainant's argument is that the Respondent, being a successor and beneficiary of the power lines over the Complainant's property which it is deriving income therefrom is obliged to pay compensation to the Claimant.

The Complainant's stand is based in his understanding that, according to the **Public Enterprises Reform and Divestiture Statute (Vesting of Uganda Electricity Board) Statutory Instrument (S.1) No. 28 of 2002** made under **Section 25 A (1)** and **26 (4)** of the **Public Enterprises Reform and Divestiture Statute 1993; Statute No.9 of 1993**, the line that was constructed in 1997 by the Uganda Electricity Board was vested in the 1st Respondent, the Uganda Electricity Distribution Company Limited under instrument, **28 of 2002 the Public Enterprises Reform and Divestiture Statute (Vesting of Undertaking of Uganda Electricity Board (No.2) Instrument, 2002** and, the 30th March 2001 was deemed the date on which the assets and liabilities specified in the Third schedule, which before the Commencement of the instrument belonged to Uganda Electricity Board were transferred to the Uganda Electricity Distribution Company Limited. (**Refer to Regulation 2(c)** of the instrument).

The Complainant further argued that Part 1 of the said Third Schedule clearly listed the 33KV substation at Kabale under serial No.3 as one such fixed operating asset that was transferred to the 1st Respondent and that the same provision further included "*All undertakings, property rights, wayleaves licences, easements, rights of way and any other interests enjoyed by the Uganda Electricity Board pursuant to the Electricity Act, Chapter 135 Laws of Uganda in connection with the ownership, use, repair and or maintenance of all the electricity supply lines with a maximum voltage of 33KV and/or below.*"

In the Complainant's view the wayleaves complained of are the property of the 1st Respondent, having been vested by law into the 1st Respondent as a successor Company and from which it derives income and consequently the 1st Respondent is obliged to pay compensation to the Complainant, for the electricity lines passing over their property at Ndorwa, Kabale Municipality.

As for the Uganda Electricity Distribution Company Ltd (UEDCL), the 1st Respondent, it argued that it did not take over the liability to compensate the Complainant as the liability attaching to the supply lines constructed over the property of the Complainant is not among the liabilities that were transferred to the 1st Respondent by the **Public Enterprises Reform and Divestiture Act (Vesting of Undertaking of Uganda Electricity Board), S.I No. 28 of 2002**. The 1st Respondent argued that while **Regulation 2 (c) of S.1 28 of 2002**, The Third Schedule Part 1 (A-H) lists the assets of the former UEB that were vested in UEDCL; Part 11 of the Third Schedule lists the liabilities that were vested in UEDCL and the said Part 11 does not relate to payments associated with the Kabale- Katuna line and that the assailed assets of the Complainant are not specifically mentioned in the Third Schedule and is therefore not vested by the statutory instrument in the 1st Respondent. The 1st Respondent argues that such assets and liabilities remain vested in the Uganda Electricity Board, pursuant to **Regulation 2(e) of Statutory Instrument No.1 28 of 2002** which states that "*all assets and liabilities that are not listed in the instrument shall in the meantime remain vested in the Uganda Electricity Board*".

It is the 1st Respondent's assertion that any stranded liability that have not been vested in any Successor Company remains the responsibility of Government and consequently the 2nd Respondent (Attorney General) and the 3rd Respondent, (the Liquidator Uganda Electricity Board) are liable for this compensation to the Complainant, if any.

To affirm its position, the 1st Respondent referred the tribunal to exhibit **RE1**, a letter dated 22 December 2015, of Reference FIN/98/99/1 from the Chief Executive Officer of Electricity Regulatory Authority (**ERA**) to the Managing Director, Uganda Electricity Distribution Company Ltd (1st Respondent) wherein ERA informed the latter in paragraph 5 thereof that the costs totalling to **UGX 98,302** include*“wayleaves and 3rd party compensations” and that “The Authority believes that this issue would be best handled by Government and has therefore referred it to the Ministry of Energy and Mineral Development. In the meantime, this has not been considered in the 2016 tariff computation”*. In the view of the 1st Respondent, its source of revenue is from the tariff set by the Electricity Regulatory Authority, which stopped making provisions therein for compensation for wayleaves; consequently, the Government of Uganda and the Liquidator of Uganda Electricity Board are liable for the Complainant's claim, any stranded liabilities of UEB being the responsibility of Government.

As to remedies; the 1st Respondent argued that the Complainant is not entitled to any remedy from the 1st Respondent on the grounds that; the Complainant failed to prove that they were the owners of the land before 2011 and it cannot be ascertained whether the owners of the land before 2011 were not compensated and secondly that compensation for wayleaves is supposed to be

only for the trees and developments destroyed during acquisition yet the Complainant's **CW2**, Stephen Bamwanga, a Land Valuation Surveyor, used wrong assumptions and formulas in arriving at the valuation amount in that he assumed a complete buy-out of the affected portion of the land.

The Attorney General, the legal representative of the Government of Uganda was the 2nd Respondent. The 2nd Respondent while admitting in its Written Response/Defence, that the 33KV lines were built by Uganda Electricity Board, denied any liability; to compensate or to remove materials from the Complainant's property and also denied liability for loss of income to the Complainant. It was the 2nd Respondent's averment and pleading, that following the coming into effect of **the Public Enterprises Reform Divestiture Statute (Vesting of Undertaking of Uganda Electricity Board) No. 28 of 2002**, on 30th March 2001, the Assets and liabilities of 33-11 KV lines were taken over by the Uganda Electricity Distribution Company Ltd the 1st Respondent and these include the 33-11KV substation, Kabaale which transferred to UEDCL, the 1st Respondent. The 2nd Respondent did not however lead any evidence before the tribunal, nor file any submissions.

The 3rd Respondent was the Liquidator, Uganda Electricity Board. The 3rd Respondent admitted that the 33KV line over the Complainant's property was built by the Uganda Electricity Board (UEB). It also stated that the UEB was placed under liquidation in 2006 and the Official Receiver was appointed the Liquidator of the same.

The 3rd Respondent was also in agreement with the Complainant and the other Respondents that the power line has since construction, remained operational.

The 3rd Respondent however denied liability in any way to the Complainant. Its argument is that following the passing of the **Public Enterprises Reform and Divestiture Statute (Vesting of Undertaking of Uganda Electricity Board), S.I No.28 of 2002** which took effect on the 30th March 2001, the 1st Respondent took over the assets and liabilities of the 33-11KV substation at Kabale, the instrument vesting *all grid connected 33 and below KV lines, substations, transformers, switchgear, conductors, meter installations.... and the land on which they are situated together with all undertakings property rights, wayleaves, licences, easements, right of way in connection with the ownership, use, repair and or maintenance of all such electricity supply lines upon the 1st Respondent.*

The 3rd Respondent premised its argument and submissions on **Regulation 2(c)** of the said **S.I No.28 of 2002** which states that *“the assets and liabilities specified in the Third Schedule to this Instrument which, before the Commencement of this Instrument belonged to Uganda Electricity Board, are transferred to the Uganda Electricity Distribution Company Limited”*. The 3rd Respondent submitted that among the Assets and Liabilities mentioned in the **Third schedule, part 1, A** is 33KV substation in Kabale, the subject of the Complaint before the tribunal, and in the circumstances the assets and liabilities of the said substation, including the power lines complained of are of the 1st Respondent and not the Official Receiver, the same having been vested in the 1st Respondent.

It was the 3rd Respondent's conclusion that the 1st Respondent is liable for any damage these lines may have caused on the Complainant's land, as well as any compensation for them, the subject matter of the Complainant having been transferred to the 1st Respondent.

The first issue the tribunal was required to determine is **whether the Public Enterprises Reform and Divestiture Act (Vesting of Undertaking of Uganda Electricity Board), No. 28 of 2002) vested the liability of the line over the claimant's/ Complainant's property to the 1st Respondent, or the same remained the property of the Uganda Electricity Board (in Liquidation).**

We noted that all parties are in agreement that the Complainant together with Siima Roy and Demetria Rukuba are joint owners of a developed property comprised in plot 193 Block 3-Ndorwa Kabale and that in 1997, the Uganda Electricity Board constructed 33KV power supply lines, and that the lines are still operational. The question then is that given those agreed facts, is into which of the Respondents in light of **S.1 28 of 2020** was vested the liability of the line in issue the 2nd and 3rd Respondents having been joined to the Complaint for the purpose of enabling the tribunal to determine effectively and finally all the issues in controversy arising from the Complaint.

We have found this to be a very intriguing issue to determine but have taken time to study the facts and the laws pertaining to this matter. We note that pursuant to **Section 125 of the Electricity Act Cap 145 Laws** of Uganda, all successor companies incorporated by the Minister in accordance with the Public

Enterprises Reform and Divestiture Act assumed all the duties and functions of the Uganda electricity Board and took over the property, rights and liabilities to which the Uganda electricity Board was entitled to or subject to.

We took note of the fact that in exercise of the powers conferred upon the Minister responsible for reform and divestiture of Public enterprises, the Minister made Statutory Instrument No.28 of 2002, by which the 30th March 2001 was deemed to be the date on which the undertaking of Uganda Electricity Board as follows were vested in the 1st Respondent. **Regulation 2(c)** of the said Instrument No.28 of 2002 states that the assets and liabilities specified in the Third schedule to the Instrument which before the commencement of the Instrument belonged to Uganda Electricity Board were transferred to Uganda Electricity Distribution Company Ltd.

We also note that **Regulation 2(e)** of the Instrument States *that “all assets and liabilities that are not listed in this instrument shall in the meantime remain vested in Uganda Electricity Board”*

We have noted that in the **Third Schedule, Part1 Section ‘A,’** serial No.3 the 33-11KV Kabale Substation is identified as a Fixed Operating Asset transferred to the 1st Respondent. We note that Section A of Part 1 of the said Third Schedule states or describes that which goes along with the assets listed therein, as follows; *“All grid connected 33 and below KV lines substation....and land on which they are situated; and further that “All undertakings, property rights, wayleaves, licences, easements, rights of way and any other interests enjoyed by the Uganda Electricity Board inconnection with the ownership, use , repair/maintenance of a ll*

the electricity supply lines with maximum voltage of and or below 33KV". This seems to therefore imply that the lines over the Complainant's property and any rights in respect over the land, and way leaves were also transferred.

All parties agree that the lines passing over the Complainant's property are 33KV overhead lines built by the then UEB. It is not debatable by **Regulation 2(c) of S.I No.28 of 2020**, that assets and liabilities related to fixed operating assets specified in Section A of Part 1 of the Third Schedule as described hereinbefore were delivered to the 1st Respondent, (UEDCL).

In this Third Schedule, Kabale substation is identified in Part 1, Section 'A' as an asset divested to the 1st Respondent. This fact was also attested to by RW1 Eng. Franklin Oidu, the Chief Technical Service Officer of the 1st Respondent who testified in paragraphs 3 and 5 of his Witness Statement that the 33-11KV substation at Kabale with its power lines were vested in the 1st Respondent, together with other power distribution assets by various Statutory Instruments.

It is agreed by all parties to this matter that the lines are to date operational, and admitted by the 1st Respondent that it owns and operates the lines. We are led to believe that the rights and liabilities relating to the 33-11KV Kabale Substation, are of the 1st Respondent. **Regulation 2(c)** of the Statutory Instrument under consideration vests "*all grid connected 33 and below KV lines..... and the land on which they are situated together with undertakings in connection with the use of such electricity supply lines*" upon the 1st Respondent.

It is our view that by virtue of **Regulation 2 (c) of Statutory Instrument No. 28 of 2020**, the assets and liabilities of the 33-11KV Kabale Substation, a fixed operating asset transferred to UEDCL, the 1st Respondent. The 33-11KV Kabale Sub-station is clearly listed in Part 1, ‘**A**’ of the Third Schedule as one such asset vested in UEDCL, the 1st Respondent.

In our view, **Regulation 2(c)** of the said Statutory Instrument, transferred **every right and liability in respect** of the 33-11KV Kabale substation to the 1st Respondent and the 1st Respondent may and is sued and held liable in respect of a liability arising thereunder.

We noted that the Complainant testified that he along with two others were owners of the property in Kabale over which electricity lines were built in 1997 by UEB. The Complainant claimed that they had owned the property customarily from way back in 1983, and only obtained a certificate of title thereof in 2011. The Complainant claimed that the power lines over their property were constructed without notification to the owners, nor with their consent or permission and to date no such permission or consent has been sought or given. The tribunal early in the proceeding ruled that this was a claim of continuing tort of trespass, and no party subsequently found it necessary to submit on this issue. Given the foregoing the 1st Respondent by virtue of and resulting from the transfer, pursuant to **Regulation 2(c) of S.I NO.28 of 2020**, is held liable for trespass upon and the damage the lines caused on the Complainant’s land.

The other issue for the tribunal’s determination is **what are the remedies the Complainant is entitled to?**

The Complainant sought in his Counsel's Written Submissions the following orders to be made:

1. That the Respondents be jointly and severally held liable to pay compensation:
 - (a) for the loss of land to the way leaves and for loss of use of the property that has been rendered inhabitable due to the way leaves constructed over the property, at **UGX216,336,900=**
 - (b) For loss of revenue of **UGX44,000,000=** that would have been generated from the property from September 2003 as a result same being condemned as unfit for human habitation.
 - (c) By the way of the general damages put at **UGX150,000,000=** in the Complainant's Written Submission. We note that from the Complainant's Witness Statement that they also sought:
 - (d) That the Respondents immediately vacate the property and restore the same prior to the construction of the power line on the property;
 - (e) and in the alternative the Respondents pay the market value of the property. This prayer is in tandem with (a) above.
2. Respondents pay the costs of the proceedings and;
3. Interest be awarded on the decretal sum till payment is made in full.

The Complainant thus sought **UGX 216,336,900=** and **UGX 44,000,000=** respectively as special damages, and **UGX 150,000,000=** as general damages.

According to the Complainant, the value of the portion of the property, injuriously affected by the severance between the power line way-leave and the road reserve/frontage and that under the power line corridor (way-leave) amounted to **UGX 40,200,000=**, the value of the buildings and site works (developments), **UGX 126,093,000=**, **UGX120,000=** the value of trees and, a disturbance allowance of **UGX 49,923,900=** at 30%. This totalled to **UGX216,336,900=**.

The Complainant also claimed an estimated rental income per month from comparable houses in the neighbourhood of **UGX300,000=**, thus the claim of an average of **UGX44,000,000=** in rental from September 2003 to the date of judgement. His total claim in special damages thus stood at **UGX260,336,900=**

On its part the 1st Respondent submitted that the Complainant is not entitled to any remedy from the 1st Respondent. The grounds for this denial were that the Complainants failed to prove that they were the owners of the land before 2011, since they were registered, as owners of the land in question only in 2011, and that; the Complainant's second witness **CW2** Hon. Steven Bamwanga, a registered surveyor who made the valuation of the property in support of the Complaint's claim for Compensation, used wrong assumption and formulae/formulas in arriving at the valuation amount, in that he assumed a complete buy out of the affected portion of the land, yet to the 1st Respondent, compensation for way-leaves is supposed to be only for the trees and developments destroyed during the acquisition of the way-leaves.

The 2nd Respondent presented no evidence and neither did they make any written submissions, other than their written Statement Response or defence.

The 3rd Respondent, while denying liability on its part submitted that the 1st Respondent is liable for any damage these lines may have caused on the Complainant's land, as well as any compensation for the same, the subject matter of the Complaint having been transferred to the 1st Respondent, pursuant to the **Public Enterprises Reform and Divestiture (Vesting of Undertaking of UEB) S.I No. 28 of 2002**.

We observe that the Complainant in his oral testimony stated that the permanent residential house on the plot was constructed in 1983, long before power line was constructed, and that as owners, they protested to the manager of the former UEB station, Kabale, the construction of the power lines over their property. He testified that the Manager then told them that the matter would be handled by their Kampala office, but nothing came of it. While the Complainant did not produce documentary evidence of claim of having complained to the then station Manager Kabale in 1989 about construction of the power line yet it is plausible that such a complaint might have been made, just as it is very plausible that the house on the plot of land was built in 1983, as claimed by the Complainant, before a certificate of title for the piece of land was acquired in 2011, and before the line was constructed. The 1st Respondent cannot by the mere fact that a certificate of title to the property was only procured in 2011 rightfully insist that the Complainants were not owning the

property before then, and in any case the 1st Respondent did not adduce any evidence to show that the land in issue was owned by someone else before 1997 nor that anyone was ever compensated by its predecessor (UEB) for the way leaves or damage to the property or ever gave consent to the right to erect and maintain electricity supply lines over the Complainant's developed property. It is consequently plausible that the land and buildings in issue were owned by the joint Complainants before the lines were constructed and that no consent was obtained before the construction of the power lines nor any compensation for any damage made. RW1 Franklin Oidu testified that the 1st Respondent had no records that the Complainant was paid, nor that anyone was ever paid to anyone.

The above supposition supports the Complainant's demand that the 1st Respondent compensates them for the property under their use or remove their lines from the property and also compensates them for the period of 18 years that the lines have been over the property.

CW3 Mr. John Musugu a Land surveyor, in his survey reports **CE6** wherein he reports on the exercise he undertook to open boundaries of the said plot 193 Ndorwa and to establish the extent to which the UEDCL line affects the plot and the property thereon, states that the affected acreage out of the entire plot is **0.197Ha** or **0.486** Acres leaving the proprietor with a developable area of **0.367Ha** or **0.909 acres**. He also observes and states that the power line passes over the residential house and that no vertical development can take place under the present circumstances.

A perusal of the Complainant's written submission reveals that the Complainant among others, sought compensation for their affected/property i.e the value of the affected area including the buildings. CW2, Hon. Steven Bamwanga stated in his report **CE6** that the compensation value of the affected land including the buildings is on "**As is Market Value**" basis and "is the sum of the open market value for land and the next replacement of the developments". He put the compensation value payable following this "As is" market value at **UGX216,336,900=** inclusive of a Disturbance Allowance at 30%, on the assumption that the Complainant is not given at least 6 months' notice to give up their interest in the land and relocate elsewhere. The rate reduces to 15% of the assessed amount. If the Complainant are given 6 months or more to give up their interest in the affected portion and the buildings thereon. This is a buy out of the area affected by the power line, and way leaves and that injuriously affected including the buildings, as described in the Appraisal Report and Valuation (**CE6**) as shown on page 10 thereof.

The above values for the property affected as described in CE6 were not challenged in any material form or manner by any of the Respondents.

We therefore have no hesitation in awarding the following sums of money as compensation for the portion of land and developments on the subject property affected and injuriously affected by the power line and way leaves, following the reports of the expert witness of the two above named surveyors;

- Value of land (0.402 acres) **UGX 40,200,000=**
- Value of buildings and land site works **UGX 126,093,00=**
- Value of fruit trees **UGX 120,000=**
- Disturbance Allowance at 30% amounting to **UGX 49,923,900=** or 15%, depending on the amount of notice that is to be given to the Complainant to give up their interest in the affected portion of the property comprising plot 193 Ndorwa.

The Complainant also claimed **UGX44,000,000= (Forty-four million shillings only)** being rentable value at Shs. **300,000=** per month from September 2003 that should have been collected, if Brianstorm Academy had rented the premises but for the fact that the building was under high voltage power lines; leading to its condemnation.

The tribunal declined to award this claim, for the reasons that:

- i) There was no evidence adduced that the property was a commercial property.
- ii) No evidence was produced to support the claim that the electricity supply line which was admitted by all parties to be a 33KV line was a high voltage line and a danger to would-be inhabitants of the property. To the contrary, it was the evidence of RW1 Eng. Franklin Kizito Oidu former Chief Technical Officer of the Respondent, with a long experience in matters of electricity spanning 1983-2021 power lines of 11-33KV do not pose any danger unless tampered with.

This fact does not discount the apparent fact that the Complainant's may have suffered mental distress, as a result of living in fear of what they perceived as a dangerous electricity line over their house.

- iii) There was no evidence adduced of condemnation of the building in issue by the appropriate municipal authority, like Municipal or District Health or engineering offices.
- iv) There was no evidence of the so called Brainstorm Academy formalizing a tenancy relationship with the Complainants nor cancellation of the same, if any.
- v) No evidence was adduced to support the Complainant's claim that they have been deprived of the use of the land or occupation of the residential building on it. To the contrary, photographs taken by Hon. Steven Bamwanga as part of his survey exercise and captured in his report **CE6** as main House-Front & side view 1&2 on page 11 of the Report, **CEX6** show a well-manicured and kept Compound, while the photograph of the main house sitting room, Interior view, on page 13 of the Report show evidences of a house that is occupied, by way of curtains and seats in the main sitting room.

Consequently, we decline to award this particular claim of rental payable, as we believe that the house was occupied.

The Complainant also makes a claim against the Respondents, jointly and severally for general damages of **UGX 100,000,000= (One hundred Million Only)**. The grounds for this claim are among others:

- (i) Interference with the quiet and peaceful possession /enjoyment of their property by the 1st Respondent's predecessor.
- (ii) Inconvenience in establishing alternative residence.
- (iii) General inconvenience to the claimant in being deprived use of his property from 1997 to date.

We must state that we are not convinced of the veracity of grounds (ii) and (iii), for the reasons stated earlier that the report CE6, pointed to a house that was occupied.

We however agree that given the fact that the power lines and way leaves were from 1997 established on the Complainant's property at Ndorwa and without any evidence of consent on the part of the proprietors and without evidence of any compensation having been made to them; and that the said lines have since remained over the property and are operational; coupled with the mental distress the Complainant/s must have suffered as a result of electricity lines passing directly over their residential house, it is only proper and fair that general damages be awarded to the Complainants for acts of the 1st Respondent's predecessors which amounted to a trespass by and the trespass is continuing.

We consequently award general damages of **UGX 100,000,000= (One hundred million only)** to the Complainants for the suffering, loss and inconvenience suffered. We find that the 1st Respondent as a successor company in whom this fixed asset was by law vested and which it operates is liable to pay the special and general

damages stated above together with costs of this Complaint, jointly and severally with the Attorney General, the 2nd Respondent; whom we hold liable to contribute in whole for the compensation to the Complainant. Franklin Kizito Oidu, RW1 for the 1st Respondent in his evidence informed the tribunal that for the Kabale- Katuna electricity line of which the lines over the Complainant's property are part of, the money for compensation of the Project Affected Persons was to come from Government. He based this testimony on the ground that the 1st Respondent is a regulated body, regulated by a Governmental body, the **Electricity Regulatory Authority (ERA)**, and that the 1st Respondent's source of revenue is from the tariff set by ERA and that ERA stopped making provisions in the tariff for compensation for wayleaves. He drew the attention of the tribunal to exhibit **RE1** a letter dated 22nd December 2015 from the Chief Executive Officer of ERA to the Managing Director, of the 1st Respondent, captioned "Approved Concession Fees and Administration Budget 2015, clause 5.0 thereof. The said Clause advised the Managing Director that wayleaves and 3rd Party compensations; would best be handled by Government and therefore referred it to the Ministry of Energy and Mineral Development, and that way leaves and 3rd party Compensations had not been considered in the 2016 tariff computation. RW1 re-states this position in paragraph 10 of his witness statement as follows; 'the Electricity Regulatory Authority (ERA) has not made any provisions for compensation and advised that Government of Uganda must provide where the need is justified; and it is for these reasons

that the 1st Respondent argued that the 2nd and 3rd Respondents be joined in this matter so that they take responsibility for the compensation awarded.

We are convinced that the Government/Regulatory body, ERA, having stopped the making of provisions for way leaves compensation in the 1st Respondent's tariff compensations, the 2nd Respondent representing Government must take responsibility for the compensation awarded to the Complainant, the law as stated in **Regulation 2(c) of Statutory Instrument** having vested the assets and liabilities of the Kabale substation unto the 1st Respondent without providing means for Compensation for liabilities that may arise or relate from such vesting.

We wish to draw an analogy or inference from a Statement made by then Hon. Justice Yorokamu Bamwine in **HCT-00-CC-MA-0251-2006 Uganda Electricity Board (in Liquidation) vs Royal Van Zayten** as follows: *"I consider the law to be that in the case of a Public Corporation, if it cannot meet its financial obligations, the loss falls on the consolidated fund....."*

The 1st Respondent was vested with a fixed operating asset which carried potential liabilities but was however deprived of means of making compensation for such potential liabilities, by the governmental regulator, ERA ceasing to provide for such compensation in the computation of the 1st Respondent's tariff and advising that government is best positioned to handle such compensation.

In our view, the circumstances place an obligation on the 1st Respondent and the 2nd Respondent, the Attorney General representing government to jointly and severally effect the compensation herein awarded.

In conclusion, the sums of the awards stated hereinbefore are awarded against the 1st Respondent and the 2nd Respondent whom we hold liable to contribute in whole for the compensation to the Complainant, together with costs of this Complaint.

The decretal sums shall attract interest at 12% per annum from the date hereof till payment has been made in full.

Dated this.....day of.....2021.

Charles Okoth- Owor.

Chairperson

Anaclet Turyakira

Vice Chairperson

Eng. Dr. Terry Kahuma

Member