

THE REPUBLIC OF UGANDA

THE ELECTRICITY DISPUTES TRIBUNAL

COMPLAINT EDT. NO. 08 OF 2015

NAMATOVU ALICE _____ COMPLAINANT

VERSUS

UMEME LTD _____ RESPONDENT

TRIBUNAL QUORUM: -CHARLES OKOTH-OWOR - CHAIRPERSON
- ANACLET TURYAKIRA - VICE CHAIRPERSON
- MOSES KIZZA MUSAAZI - MEMBER

JUDGMENT

Mr. Muniina Charles, whom she gave Special Power of Attorney, represented the Complainant, Ms. Namatovu Alice, and Counsel Nagemi Peter John from M/s Nagemi & Co. while Counsel Byabazaire Naome from M/s Shonubi, Musoke & Co. Advocates, represented the Respondent, UMEME LTD, an electricity distribution Company.

The issues agreed to for determination were as follows:

- 1.** Whether or not the Respondent, UMUME LTD, committed trespass to the land of the Complainant?
- 2.** If so, whether or not the Complainant is entitled to compensation from the Respondent?
- 3.** Whether there are other appropriate remedies available to the Complainant?

The Complainant sought (i) Special Damages amounting to UGX 10,000,000 (Uganda Shillings ten million) due to the destruction of his crops and preventing further use of the corridor through which the electric power line of the Respondent passed before it was relocated. (ii) General Damages of UGX 15,000,000 (Uganda Shillings fifteen million) due to the actions of the Respondent's employees by trespassing upon her land (iii) Cost of the suit.

The Respondent, on the other hand, submitted that the complaint should be dismissed with costs to the Respondent. The reasons advanced were (i) the power line had been installed on the assumption that it was at the boundary

of the Complainant's land (ii) the line was relocated, with haste and within a month, to the road reserve when the Complainant lodged her complaint.

The pleadings of the Complainant [PE1] are that sometime in 2011, without permission and while she was away from home, the Respondent's employees or agents erected an electric power line (consisting of poles and wires) that passed through her land situated at Plot 79, Block 191, Mengo County, Magere Village. The plot is her *kibanja*, where she lives and grows various fruits for commercial and domestic use. This action of trespass was done in one day because upon returning home, she found the power line already in place.

She immediately alerted the LC officials by a letter of complaint dated 10.3.2011 [CE IV]. She made several visits to the Respondent's offices at Bombo District Office but in vain. In 2013, after almost 2 years of going to the Respondent's offices, she formally lodged her complaint dated 11/01/2013 that was received on that day by a one Sembatya [CE III].

On the 4.2.2013, she wrote a follow up letter [CE V] which was received by a Mr. Gerald Mukasa on the same day who wrote an action on it saying ***"We shall handle this work on Thursday 7.2.2013. Conductors will be relocated from your land to the road reserve"***. The Respondent's officials kept their promise and the power line was relocated on 7.2.2013.

On 5.2.2013 (one day after the promise by the Respondent's official), she wrote a letter to the Respondent's Company Secretary pointing out that (i) the trespass was criminal (ii) she had suffered losses and hence needed to be compensated [CE VI].

On 15.2.2013 she caused action by her lawyers (M/S Kityo & Company) to write to the Respondent's Company Secretary seeking compensation of UGX 8,000,000 other legal action would be taken [CE VII].

During cross-examination, the Complainant stated that she complained to the Respondent as soon as the power line was erected but verbally. Then she was advised to use the Respondent's Helpline which she did but in vain. Then she wrote a letter of complaint on 5.10.2012. She again wrote a second letter dated 11.01.2013 [CE III]. But it's only her third letter of February 2013, that the Respondent acknowledged and acted upon [CE V]. She stated that when she asked for compensation, Engineer Gerald Mukasa told him that he does not deal with compensation and advised her to contact the Respondent's management.

During re-examination, she said that considering the loss of fruits and potential income from them and in consideration of lost time (2011-2017), she expected the Tribunal to award her a total of UGX 25,000,000 as composed of (i) trespass fine; UGX 15,000,000 (ii) property destruction; UGX 10,000,000. But she clarified that despite the destruction, she still earned some income from the fruits.

The Complainant's sole witness was Mr. Charles Mutanda [CW 2] whose written evidence in chief was tendered in. Mr. Mutanda was the Secretary for Defense of the Magere Village and knew the kibanja and the owner very well. He indeed affirmed that a power line had been erected through the kibanja. He also stated that when the couple (Mr. Muniina and his wife Namatovu) complained to the LC by way of letter that was dated 10.3.2011 about the unauthorized erection of the power line through their land, they were advised to take up the matter with the Respondent's area officials. But the relocation of the power line was done in 2013; almost two years later than they had complained to the LC. However, the Respondent did not make any compensation whatsoever.

The Respondent's sole witness was Mr. Benedict Mayende. His was designated as RW1 and his written statement and attachment admitted as RE1 and RE2.

Under cross-examination, he re-stated and affirmed as follows:

1. He is a Senior Way-leaves Officer of the Respondent.
2. He was instructed by the Respondent to visit the Complainant's site, assess the situation and make an evaluation report so that the Complainant may be compensated for the loss and damage of property. He visited the site and was conducted through the previous power line corridor by Mr. Charles Muniina [CW1]. He counted the damaged and fruit trees; both permanently damaged and those re-growing.
3. He submitted his evaluation report, based on Wakiso District guidelines and rates, on 11.10.2016. This report was tendered in as RE 2 and its total value was UGX 916,500. The report did not capture pawpaws though the Complainant claims there had been damaged.
4. The Respondent was ready and willing to pay the compensation, but the Complainant rejected the amount as being too low.
5. He agreed that the compensation, in addition to the direct fruit damage, only took into account the lost time of re-use of land and gave it a value of 30% (i.e. UGX 211,500). This does not realistically consider the expected loss of income for the period. He contended that these were the guidelines from Wakiso District and he could not work against them. Furthermore, the matter was reported to the Respondent in 2013 and hence he was not given any information on exactly how long the trespass had been.
6. He stated that the power line was low voltage and the cables were in an insulated bundle. Therefore they never posed any potential danger to the Complainant or anyone else. This meant that the Complainant could have fully utilized her land during the period they power line passed through her kibanja.

7. He stated that his written statement was written earlier (6.9.2016) than the evaluation report was done (11.10.2016) but the two should be considered taking into account the developments that the Respondent re-routed the power line and has offered to compensate the Complainant.

We, the Electricity Disputes Tribunal (EDT), have on our part carefully considered the pleadings, testimonies of and other evidence of the respective parties and also considered their respective written submissions.

The issues agreed upon to be considered by the parties are:

1. Whether or not the Respondent, UMUME LTD, committed trespass to the land of the Complainant?
2. If so, whether or not the Complainant is entitled to compensation from the Respondent?
3. Whether there are other appropriate remedies available to the Complainant?

Let us consider first issue: **Whether or not the Respondent, UMUME LTD, committed trespass to the land of the Complainant?**

It is not in dispute that the Complainant did not give permission for way leaves to the Respondent otherwise the Respondent would have produced such evidence. It is not in dispute that the Complainant lodged a written complaint to the Respondent on 4.2.2013, received by a Respondent's official, one Gerald Mukasa [CE V]. Mr. Mukasa did not only acknowledge receipt of the complaint but endorsed it "***We shall handle this work on Thursday 7.2.2013. Conductors will be relocated from your land to the road reserve***". The Respondent's officials kept their promise and indeed the power line was relocated to the road reserve. This act clearly serves as proof that indeed they admitted to a trespass which was quickly rectified. [We, the Tribunal, would like to commend the Respondent's swift action of acting within three days after receiving the complaint].

We therefore affirm that the Respondent committed a trespass to the Complainant's land.

The second issue "***If there was a trespass whether or not the Complainant is entitled to compensation from the Respondent?***". Indeed the Tribunal finds it reasonable and fair that the Respondent should compensate the Complainant. The Respondent had indeed come to the same conclusion during the course of this trial. The Respondent had gone ahead to value the

losses and made an offer of UGX 916,500. However, this offer was rejected by the Complainant for being far below her proposal of UGX 25,000,000. We have carefully considered both values and have come to the following figures as reasonable compensation:

- (i) Property destruction; UGX 916,000 + 30% other unaccounted fruits = UGX 1,192,000
- (ii) Trespass (for the period we could ascertain as 4.2.2013-7.2.2013)= UGX 2,500,000.

The third issue: **“Whether there are other appropriate remedies available to the Complainant?”**. The last appropriate remedy is that the Respondent shall pay costs of the suit.

So we order.

Dated at Kampala this _____ day of _____

Charles Okoth-Owor

Chairperson

Anaclet Turyakira

Vice Chairperson

Eng. Dr. Moses K Musaazi

Member