

**THE REPUBLIC OF UGANDA**

**THE ELECTRICITY DISPUTES TRIBUNAL**

**COMPLAINT EDT. NO. 13 OF 2015**

**OBUA FRANCIS \_\_\_\_\_ COMPLAINANT**

**VERSUS**

**UMEME LTD \_\_\_\_\_**

**RESPONDENT**

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

**JUDGMENT**

The Complainant, Mr. Obua Francis, represented himself while Counsel Namusikwe Priscilla from M/s Shonubi, Musoke & Co. Advocates represented the Respondent, UMEME LTD, an electricity distribution Company.

The issues for determination were as follows:

1. Whether the Respondent was liable for the damage of the Complainant's grinding machine?
2. Whether the Complainant is entitled to the remedies sought?

The Complainant sought special damages amounting to UGX 107,935,000 (Uganda shillings one hundred and seven million, nine hundred and thirty five thousand) giving a breakdown of the replacement values of the spoilt milling equipment, the projected loss of income for several years, as well as transport and accommodation expenses in pursuit of redress from the Respondent **[CE1- 3]**.

The Respondent, on the other hand, submitted that the complaint should be dismissed with costs awarded to the Respondent. The reasons advanced were that the Respondent was not responsible for the burning of the Complainant's motor (which was part of the grinding machine) and the cause was due to the Complainant's failure to maintain the electrical installation within the factory. In clarification, the Respondent cited the **Electricity Act** and in particular the **Electricity (Primary Grid Code) Regulations, 2003** , **Clause 6.3.1** which states that "the Consumer shall use its best endeavours to ensure that his/her electrical installation and any equipment within it (a) complies with the Code and (b) is maintained in safe condition".

The pleadings of both parties show that the Complainant sued the Respondent Company (Umeme Ltd.) for the burning of his electric motor that was part of his

grinding machine used in the commercial business of grinding and selling foodstuffs like maize and cassava flour.

The Complainant alleges, from his written statement [CE2] as follows:

In March 2012, the Respondent's officials relocated the meter from his premises to a nearby electricity pole and at the same time disconnected him from supply because of an alleged outstanding bill. The relocation was that the meter box and the meter were removed from the factory wall and then mounted on an electricity pole nearby. An underground armoured cable was used to connect the power from the meter to an isolator inside his factory. [The power from the isolator then goes to the starter of the grinding machine ].

On the 5.12.2012, he went to District Office of Umeme (Gulu) and paid UGX 400,000 as the outstanding bill. Negotiating with Respondent's Commercial Manager, Mr. Dan Mabirizi, they arrived at the amount, after a fraud bill had been removed. He was then told that his power would be reconnected from the pole. But in his letter to the Legal Manager, Umeme, dated 2.4.2015, he states as "I agreed with my commercial officer then I paid 400,000/= my total bill was reduced to 1.5 million shillings and this is shown in the bill statement dated 19<sup>th</sup> March 2015".

On the 23.12.2012, his power was reconnected by the Respondent's officials.

On the morning of 26.12.2012, he started the grinding machine but it only worked for about two minutes and stopped. He saw smoke coming out of the isolator box and the motor terminals. Upon opening the isolator box, while smoke was still coming out, he noticed that one terminal (Yellow phase) from the cable was hanging and not connected to the isolator terminal. This connection, he affirms, was omitted/left loose by the Respondent's technicians who carried out the relocation of the meter box. But the other two terminals (Red and Blue phases) were firmly connected and no soot is on them up to date. When he checked the motor windings, he also noticed that the Yellow phase *laps* were completely burnt whereas those of the Red and Blue phases were intact.

He finally alleges that since that day 26.12.2012 to date, he has not operated his grinding machine, which has caused him a lot financial loss including loss of customers and failure to service bank loans.

During his oral submission, the Complainant re-stated that his machine was burnt in 2012. Then in 2013 he obtained a loan from the Centenary Bank (Lira branch). Because of the delay by the Respondent to compensate him for the burnt motor, he defaulted in servicing the loan as evidenced from the Bank's correspondences [CE8-10]. In an attempt to resume the business, he tried to replace the burnt motor with another one. But the Centenary Bank confiscated the motor. Therefore, with the failure to resume business, the Complainant has lost customers in the last 2 years that include Ngai SS. Before the motor was burnt, his daily income was about UGX 30,000 in addition to UGX 800,000 per school term from Ngai SS. In addition, the Business Plan, written for him by the Uganda Gatsby Trust (Makerere University), could not be executed. This meant a loss of UGX 159,360,000.

Hence in the last two years, 2013-2015, the Complainant stated that he had lost business of customers using his grinding machine, one motor was burnt while a second one was confiscated and has spent a lot of money in transport in an attempt

to get redress with the intervention of other persons and organizations. In specific terms he went to Umeme Limited Headquarters in Kampala, ERA headquarters in Kampala, UAP Insurance, the Water and Electricity Consumers' Association and finally to EDT.

When the Complainant was cross-examined, by the Respondent's Counsel, he stated as follows:

1. He obtained the loan of UGX 1.0m from the Centenary Bank in order to pay an outstanding electricity bill.
2. The wiring of his electrical installation was done in 1993 by a UEB technician whose name he could not remember because it was such a long time ago. The installation was tested and was passed by Umeme but no Certificate of Completion was issued to him.
3. Upon switching on the motor, it blew after a few seconds; there was heavy smoke from the machine and at the meter box.
4. Among the Respondent's team that reconnected his power, he knew one person though he could not remember his name.
5. When the motor got burnt he did not get any technician to check it out.
6. His education was S.4 (from Ataparah SS) but he did not complete. He was not an expert in electrical installations.
6. He only had copies of the photos showing the burnt out motor and the premises because the originals were on the Respondent's computer.
7. In his letter dated 11.3.2013, he stated that the meter relocation was done on 10.12.2012. But in his written submission (CE2) he stated that the relocation was done in March 2012. When asked to clarify, he affirmed that the date was 10.12.2012.
8. He agreed that the Respondent's team went to relocate the meter using a supply cable and that it was used to connect power from the meter box to the isolator in the factory. To confirm his understanding, he drew a simple wiring diagram.
9. He agreed that he did not know what a load cable is. He also did not know what they call a cable, which connects power from the transformer to the meter.
10. He stated that he irregularly carries out maintenance and has had power since 1993.
11. He stated that the insurance company told him that his motor was burnt because of negligence.
12. He stated that the Respondent sent an engineer from Kampala who made a report and he (the Complainant) was given a copy. But he stated that the report's conclusion was wrong.
13. He did not understand the question whether wiring to the isolator inside the factory was "internal" wiring or not.

At the end of the cross-examination, the Complainant wished to clarify and he stated that:

1. The electrical earth connection had had no problem ever since it was done in 1993.
2. The Respondent's report was given to him this year (2016).

3. The second machine was working well but it was intercepted. The last day he ran the machine was towards the end of March 2011. He had been off power supply because of an alleged fraud bill. But he could not remember the details.

In his final written submission, received by EDT on 14.3.2017, the Complainant stated as follows:

1. That ever since 2012, when the Respondent's technicians caused the burning of his motor, he has incurred huge financial losses. He had built up a clientele base of schools, institutions and individuals ever since he started the foodstuff grinding business in 1993. He had two other similar businesses elsewhere. He was planning to start on a fourth but this calamity stopped the process. Because of demand for his services, his business was a 24-hours operation.

2. During the meter relocation exercise, he challenged the Respondent's technicians as to why they had not used a joint box at the place where the motor had been. The technicians claimed to have forgotten the joint box. He had wanted them to go back and bring the box but they pleaded with him that they had a busy schedule and would not return to Ngai Trading Centre shortly. Therefore, in the interest of time, he allowed them to connect the cable directly to the isolator. In order to do so, they made a hole through the wall where the cable was passed. In his opinion, this was unlawful and the Respondent should be completely held responsible.

2. That routine maintenance was always carried out in his three factories and there had never been a failure anywhere.

3. The motor was burnt because of a loose connection and this can be confirmed by other Respondent's technicians whom he had shown the isolator whenever they were inspecting the power transmission lines on a weekly basis.

4. That since the Respondent's technicians neither gave him notice nor brought any written permission to relocate the meter, despite his asking them to go back and bring the same, it was conclusive that the burning of the motor was intentional. Therefore, the Respondent should meet all the 4+ years' losses; from 26.12.2012 to date.

5. That when the incident occurred, he immediately reported the matter to Respondent's Gulu District Manager, Madam Harriet. In addition he reported the matter to the Respondent's Headquarters in Kampala (Rwenzori House). He also wanted to report the same to the Police post of Ngai Trading Centre as well as the LC 1 chairman. But the police told him to patiently wait.

6. On 5.12.2012, he reached an agreement with the Respondent's Commercial Officer (Mr. Dan Mabirizi) that the alleged fraud bill be removed. This was done and the Complainant immediately paid the balance which was UGX 400,000. The Commercial Officer assured him that his power would soon be reconnected (from the pole where it had been disconnected in September 2012).

7. Some days later, the Complainant met some Respondent's workers who were replacing transformer poles in Ngai Trading Centre. He therefore assumed that they had also gone to reconnect his power during the same exercise. Quoting verbatim from his final written submission ***"The Complainant made it clear that other technicians came on Sunday to reconnect him from the pole, then Monday morning 26th/12/2012 he started the motor and that was when the motor was burnt, this could have happened on Sunday but the Complainant was***

**in Church".** In other words, the technicians called him and told him that they had finished to reconnect him to power from the pole but if it was a working day he was going to start the milling machine and they were going to see smoke. [This means that the Complainant negotiated with the Respondent's team to reconnect his power on Sunday (probably on Christmas Day or on 23.12.2012 which, was actually Sunday. In his letter to the Legal Manager, Umeme, dated 2.4.2015, he stated **"After three weeks then the technicians went and connected me on 23<sup>rd</sup>/Dec/2012 but from the pole and three days later that was on 26<sup>th</sup>/Dec/2012, immediately after Christmas eve, when I started my machine as usual, the machine stopped by its self that was after 3 to 5 minutes."**]. They did so and phoned him, while he was still in church, that the work was completed. Had it not been a non-working day, the Complainant would have restarted his machine in the presence of the technicians. He believes that they would have witnessed the burning incidence. But he had to wait until the following day (26.12.2012) and that is when the motor got burnt].

9. In 2011, the Complainant started getting fraud bills and he had to go up the Headquarters (in Kampala, Rwenzori House) to resolve the issue. These actions led to delays in servicing his bank loans. Indeed the Centenary Bank (Lira branch) swung into action and confiscated his other motor which he had brought to replace the burnt motor. However, the bank did not take away its starter (which is seen in the provided photos [CE2(f)]).

10. The summary of his claims are (i) loss of two motors (of power capacity 30 & 20 HP) totaling UGX 10,500,000, (ii) loss of business from the two motors for the period 2012- 2017) totaling UGX 95,770,000 and (iii) cost of transport, food and accommodation totaling UGX 1,665,000. The grand total is **UGX 107,935,000.**

The Complainant's first witness (CW2), Mr. **Dickson** Omara, stated under cross-examination as follows:

He was employed by the Complainant as a cashier at the milling site in Ngai Trading Centre during the period of 2010- December 2012. His duties were to collect money from the customers and to keep records. Some of the big customers were Ngai SS and Iceme Girls SS. In addition, he kept record of some expenses. There were a **total of five (5) workers earned in the range of UGX 20-30,000 per day.....but were paid as wages except the machine operator and the cashier who had salaries. After 2012 all workers were laid off because the (wage) bill was too high.** The meter box was removed. But after clearing the bill (on 5.12.2012) power was reconnected on 25.12.2016. When the machine was started on 26.12.2012, he saw smoke coming from inside the house to the outside. The only change to the wiring he saw was the relocation of the meter box from building to the nearby electricity pole. Under examination, he confessed that he did not know how much tax the company paid.

The Complainant's second witness (CW3), Mr. Moses Abongo, under cross-examination stated as follows:

That he was the machine operator of the Complainant's factory during the period 2008- 26.12.2012. The machine had worked smoothly, without any problems, all

along until that day (26.12.2012) when it stopped. The meter was relocated from the building to an electricity pole. Although the Complainant had refused the relocation, the Respondent's workers convinced him. The power cable was passed through the wall during the relocation exercise.

That on 26.12.2012, when he (CW3) started the machine, he saw smoke coming out of the motor and the isolator. He then called the Complainant to witness the smoke, which was clearly coming from the isolator and the motor. However, he did not know the extent of the damage.

That he studied in Kibanda SS (Kiryandongo District) and went up to S4 in 2004. That the motor relocation was in 2012. But he witnessed the relocation for the first two hours and left before it was completed.

That he did not know who did the internal wiring.

That he had worked at the Complainant's factory for 5 years. That from time to time, about once every two months, someone would go and check the wiring in the factory. That he did not know what 'earthing' meant so he could not know whether this was done.

The Respondent on the other hand denied that it was responsible for the burning of the Complainant's motor of his grinding machine. The Respondent stated as follows:

1. They (the Respondent) received several written complaints (CE **aa-zz**) from the Complainant in regard to a burnt motor of a milling machine that belonged to the Complainant. The Complainant alleged that the cause was an electrical connection that was left loose by the Respondent's technicians during the course of their duties.
2. In order to get to the bottom of the complaint and to resolve it, the Respondent sent various officials, at different times, that included their engineers/technicians and District Manager to the Complainant's site so as to gather evidence and advise management on the way forward.
3. The findings and technical conclusions were that (i) the wiring of the electrical installation was poor (ii) the internal wiring at the motor was substandard and in bad condition and (iii) there were no routine maintenance checks done.
4. The Respondent's officials also checked and found that the electrical installation on the side of the Respondent was sound and without fault.
5. The Respondent concluded from the above site inspections and analyses that the damage to the Complainant's motor, if any, was a result of defective electrical wiring of the Complainant's internal installation at his factory premise. Therefore, the Respondent was not responsible for the property (milling machine) damage and the income loss that subsequently arose.

The Respondent presented two witnesses and various documents to prove their case:

The first witness, Mr. Tom Awuzu (RW2), stated that he was currently the Respondent's District Manager for Gulu and Kitgum and had been in that position since **14/4/2014**. His knowledge of the complaint started on 14/4/2014 when the Complainant went to his office and informed him that the issue had been long

standing. The Complainant believed that since RW2 was a new manager, he would be able to solve the problem. He claimed to have written to the previous D/M (Ms. Harriet Mukisa) but at that time he did not have a copy of the letter(s) and since RW2 did not have the handover report from Ms. Mukisa, he could not refer to the complaint. So the Complainant explained the complaint as: **In 2011 the Respondent's staff who went to relocate his energy meter from his premise to the Respondent's electrical pole left a loose connection in the isolator connecting the power to the milling machine. The loose connection caused the burning of the motor of the milling machine.** His (RW2) immediate reaction was that this was not the responsibility of the Respondent but of the Complainant and his technicians. He further explained to the Complainant that the Respondent's responsibility does not go beyond the energy meter. But since the complaint had been brought to him, he would send a technical team to investigate the issue. He soon afterwards sent the team but unfortunately, the Respondent was neither on site nor could the team get access to the inside of the building. Sometime later, the Complainant returned the office and furiously accused RW2 of having joined those who were delaying his compensation. RW2 promised to visit the site himself together with the technical team. In order to expedite the complaint's resolution, RW2 went alone to the Complainant's site that is without the technical team who had gone to attend to an emergency elsewhere. He explained to the Complainant that he, as Manager, wanted to get firsthand information but would send a technical team soon afterwards. While inside the building, the Complainant showed him the alleged burnt motor and isolator. As to why it had taken so long to resolve the matter, the Complainant alleged that the previous D/M kept promising him to be patient as the matter was being handled. He, the Complainant, added that when the motor blew in 2012 (possibly in December), he took it for repair since he was a trained electrician. Unfortunately, the repairs failed. As to why he did not wait for the issue to be resolved before attempting to carry out the repairs on his own, he said that it was because of the delays from Respondent's officials. RW2 then promised to send a technical team to investigate after which he would make a report and send it to the Respondent's H/Q for further advice. Indeed RW2 sent a technical team, which included the Technical Officer (Mr. Ocan Robert, RW3). The team made the inspection, took photographs (of the motor, isolator and premises) to enhance the evidence and reported back to the District Engineer (Mr. F. Baguma) who made a report and gave it to RW2. The report stated that the alleged loose connection was INSIDE the Complainant's building and hence the Respondent could not be held responsible for its alleged cause of the motor burning since this was outside the mandate of the Respondent. RW2 forwarded the report to Respondent's Legal Department for the next steps. While a response was being awaited, the Complainant returned to the office of RW2 and requested to know the progress of his compensation. RW2 informed the Complainant that he would be informed by an official report. When RW2 received communication from the Respondent's H/Q, he wrote to the Complainant that, basing on the technical report, he was not going to recommend compensation for him. The Complainant was hugely upset when he read the letter and claimed the RW2 had gone to work in Gulu so as to block his compensation. RW2 explained to him that this could not be the case since the problem had been

hanging for three year before he (RW2) started working in the Gulu office. Thereafter, the Complainant decided to communicated directly with the Respondent's H/Q.

Under cross-examination by the Complainant, RW2 stated that:

- 1.** He was not aware of the exercise of replacing transformers in 2012 and that of replacing transformer poles in 2013 since this was before his employment in the Gulu office.
- 2.** He was alone when he met the Complainant at the factory.
- 3.** It was on third attempt that he sent a technical team that also took photos and subsequently a report was made.
- 4.** The photos were taken after the Complainant reported the matter to the Respondent's H/Q.
- 5.** Even though the Complainant feels that it is wrong for the Respondent's responsibility to stop at the meter, it was by law and indeed the cable after the meter belongs to the Complainant.

Upon re-examination, RW2 clarified that:

- (i)** He was informed that the motor was burnt on 26.12.2012.
- (ii)** He started acting as D/M on 14.4.2014. Ms. Harriet Mukisa was D/M during the period the alleged incidence took place.
- (iii)** It was true the case was handled for more than one year prior to his assumption of duties in Gulu.
- (iv)** In his opinion there are no exceptions where the Respondent wiring to the consumer's power supply goes beyond the meter.
- (v)** Under normal circumstances matter of that nature are forwarded to the H/Q. But they would not take so long to resolve. However, in this particular case there are no records to show why it had taken so long.

The second witness, Mr. Robert Ocac (RW3), stated that he was currently the Respondent's Technical Officer in Gulu and had been in that position from 2005 to date. He testified that the Complainant's case was brought to his attention by his supervisor, a Mr. Baguma, who was the Maintenance Engineer of the Respondent. Mr. Baguma sent him to the site so as to assess and establish what had happened. When he got to site, he saw the meter box fixed on an outside electric pole from which a cable emerged and entered the factory through the wall. The Complainant opened the factory and while inside, RW3 saw a motor lying on a metallic frame and an isolator mounted on a wall. He saw black soot on the middle wire (of the 3-phase supply cable) in the isolator. He also checked the control/starter of the motor whose box was also mounted on the wall. This contained several wires that were not properly aligned; giving an impression of a poor technical job. His technical assessment was that the control system of the starter was faulty because of the misalignment of the wires and could have let to the alleged burning of the motor. However, this was a just a visual observation but nothing was tested so to confirm the suspicion. In addition, soot was a sign of burning as a result of failure of the isolator to operate as a protective device. He suggested that discrimination protection should have been used so as to prevent such a problem.



RW3 identified the photos he took during the site visit mentioned above. He identified the supply cable [RE2(a)], which feeds power up to the isolator, and that it belonged to the Complainant. The Respondent's officials, in conjunction with the Complainant, installed it. He further stated that the wires in question were after the isolator and were the responsibility of the Complainant as the consumer. The burning in the isolator was on one of the (three) phases, which got overloaded.

When RW3 was cross-examined by the Complainant he stated as follows:

1. It was last year (2016), upon the instructions of Mr. Baguma, that he went and took the referred to photos.
2. It is true that the Respondent's officials relocated the meter and its meter box from the factory wall to a nearby electricity pole. But he did not know when this was done since he was not there.
3. The Complainant was denying that he colluded with the Respondent's technicians to have power connected for him into the isolator.

When RW3 was re-examined he stated as follows:

1. He was not present when the meter was being relocated.
2. In general practice the Respondent does not connect power up to the isolator. But in this particular case the Complainant may have requested the Respondent's officials to do so on a private understanding.

The Complainant reacted to No.2 above and said that they begged him to break into the wall so as to pass the cable through it [RE2(b)].

In the final written submission, the Respondent strongly denied responsibility of the cause of the alleged burning of the Complainant's motor that formed part of the grinding mill. The Respondent contended that

- (i) The Scope of the Respondent's duty was governed by the **Electricity Act** and in particular the **Electricity (Primary Grid Code) Regulations 2003 (Grid Code)**. The relevant part of the Code is Clause 7.1.1, which provides that "the licensee, in this case the Respondent, .....shall provide, install and maintain in a manner which is sensitive to the environment and the amenity of the area, equipment for supply of electricity **up to the point of supply**. In other words, the point of supply being the energy meter, this means that the **internal wiring is the sole responsibility of the Customer/Consumer who is the Complainant herein**.
- (ii) The Doctrine of Vicarious Liability is applicable here that: If the Respondent's workers, during the exercise of relocating the energy meter, connected a power cable from the meter to the isolator but left one wire loose (one of the 3 phases) inside the isolator and this subsequently led to the burning of the motor, and therefore the Complainant claims for liability of the Respondent for these actions of the employees, then it is referred to as vicarious liability. However the vicarious liability would only hold if there existed (i) a master-servant relationship (ii) the acts were done in the scope of employment. But throughout all the evidence given, the Complainant failed to identify the person(s) who carried out the internal wiring. In which case the person(s) could have been either the

Respondent's employees, Respondent's contractors/sub-contractors or purely private. Therefore, the master-slave relationship failed to be established. Additionally, in the event that person(s) who carried out the work were employees of the Respondent, they did so outside their duties to the Respondent because the statutory duty stops at the supply point. Therefore, the Respondent cannot be held responsible for their actions.

- (iii) The Safety of the Consumer's Installations was an issue that could not be overlooked. RW3 inspected and took photos of the electrical installation especially that of the isolator. The poor state of wiring could have led to the malfunctioning of the control gear. Secondly, the motor had been in use for about 20 years (i.e.1993- 2013) and there were no records of routine maintenance. Thirdly, the milling machine had been disconnected from power for about 10 months (because of nonpayment of electricity bills) and its motor got burnt upon re-energizing. Therefore, without any routine maintenance, any problem could have arisen during the 10 months. Fourthly, the Complainant admitted that he was not a qualified electrician and he never sought any professional assessment/analysis of cause of the motor burning. Fifthly and finally, the earth test results (RE1) showed a high value of 28.6 ohms and this could have reduced the electrical protection of the motor thus leading to its burning.
  
- (iv) The inconsistencies in the various documents and oral testimony of the Complainant cast doubt on the credibility of his evidence: In exhibit CE2 the Complainant states that meter relocation was done in March 2012 whereas during his examination in chief he said it was done in 2013. But during cross-examination, he said that he was present when the meter relocation was being done in November 2012.
  
- (v) The remedies that were being sought by the Complainant had no ground and should be rejected. The special damage/loss of income had not been proved e.g. by audited books of accounts. Additionally, the Complainant got a loan on 9.3.2013 and defaulted by 25.7.2013 [CE 8-10]. But this time is outside the period of interest because, in his own testimony, the Complainant had been off power for 10 months prior to the incident, which was in December 2012. This means that the power reconnection was in late 2013, precisely about October. Therefore, the Complainant's loan default was earlier than the alleged incident and cannot be entertained herein. The general damages and costs should also not be awarded to the Complainant because the Respondent was not responsible for the damage. The Respondent believes that the Complainant ought to have mitigated his loss.

The Tribunal has put together the evidence (written and verbal) of the two parties as:

The Complainant, Mr. Obua Francis, was self-represented (CW1). He submitted two written statements [CE xxxx], which were received by EDT on 5<sup>th</sup> September 2015 and 5 January 2016.

He alleged that in March 2012 (or some time in November 2012), some Respondent's officials went to his factory to relocate his electricity energy meter from the factory wall to a nearby electricity pole. While he initially refused, because they didn't have any official documents from the Respondent, he agreed and the team did their work. The work involved moving the meter and its box to a nearby electricity pole and connecting the meter to the isolator of the milling machine which was inside the factory. This necessitated making a hole through the factory wall for the cable to pass. The Complainant objected to the team's failure to install a junction box in between the isolator and the meter but the team told him that they didn't have one at that time and if he insisted on it, they would return after a long time as per their busy schedule.

He alleged that on 5.12. 2012 he went to the Respondent's office (Gulu District) so as to have his electricity supply restored to his premises (milling factory house). The Commercial Officer of the Respondent, one Mr. Dan Mabirizi , agreed to cancel the alleged fraud bill and told the Complainant to pay UGX 400,000 as the outstanding balance so as to reconnect the power supply. The Complainant immediately paid the UGX 400,000 (CE zzz 1) and was assured that his power supply would be restored soon afterwards. Some days later, the Complainant met a team of the Respondent who were replacing some electricity poles in Ngai Trading Centre (where his factory is located). He believed that they had also been sent to reconnect his power supply. He negotiated with them to do so but that it should be done on Sunday (23.12.2012). The team did so on the agreed day and phoned to inform him while he was still in Church. On 26.12.2012, the Complaint's machine operator, Mr. Moses Abongo (CW3), switched on the milling machine. But moments later, it stopped and he saw smoke coming out the motor and the isolator to the machine. CW3 immediately called the Complainant who witnessed the smoke coming out of the two places. The Complainant opened the isolator and found that the Yellow Phase (one of the three phases) was loose. He concluded that this was the cause of the motor burning. He recounted that the cable to the isolator had been fixed by the Respondent's team who had relocated the energy meter from the factory house to a nearby electricity pole. He therefore concluded that it was the team who had left the loose connection. In his opinion, as these were employees of the Respondent, then the Respondent was responsible for the damage and the Respondent must fully compensate him for the damage and income loss.

The Complainant immediately contacted the Respondent's District Manager (Gulu), one Ms. Harriet Mukisa, who promised to look into the problem but never did. [However, the Complainant did not provide any written correspondence(s) either between the Manager or the anyone in the Gulu Office with him].

The Complainant did not seek any professional diagnosis of the cause of the motor burning but some time later he tried to get the motor repaired but the exercise failed.

The Complainant tried to replace the burnt motor (30HP) with another one (20HP) but it was confiscated by the Centenary Bank over a loan default.

When all his efforts to be helped by the Respondent's officials in Gulu failed, the Complainant sought redress from (1) The Respondent's H/Q in Rwenzori House (Kampala); who sent their engineer ( a Mr. Robert Acac, RW3) to assess the damage and the cause of the problem (2) the Electricity Consumers' Association [CE 6]; who referred him back to the Respondent (3) UAP; who tried to mediate between him and the Respondent but the Respondent denied responsibility of the accident (4) the Electricity Regulatory Authority (ERA)[CE 7] who also tried to mediate, failed and referred him to EDT.

The Respondent, presented two witnesses; Mr. Tom Awuzu (RW2) and Mr. Robert Ocac (RW3). RW2 is the current District Manager who took over from Ms. Harriet Mukisa. RW3 is the current Technical Officer of the Respondent in Gulu. Under instructions from the Respondent's H/Q, RW2 and RW3 visited the Complainant's site, but separately and on different days so as to assess the damage and make recommendations to the H/Q. RW2, made a visual assessment and noted that the affected part was inside the Complainant's building and after the meter. RW3 made visual observations, took photos and measured the earth resistance (RE1 and RE(2)(a)-(d)) as well as suggesting the possible causes of the accident. RW3 made a technical report, gave it to the Gulu District Maintenance Engineer, one Baguma, who passed it on to the D/M (RW2). RW2 made a report, sent it to the H/Q and gave a copy to the Complainant. The report recommended that the alleged burning of the motor could not be the responsibility of the Respondent since this occurred after the meter where the Respondent's responsibility stops.

The Respondent made a final written submission and stated as follows:

1. The Scope of the Respondent's duty was governed by the **Electricity Act** and in particular the **Electricity (Primary Grid Code) Regulations 2003 (Grid Code)**. In brief it means that the responsibility of the Respondent **ends at the point of electricity supply i.e. at the meter. Thereafter, that is beyond the meter, it is the responsibility of the consumer and in this case the Complainant.**

2. The Doctrine of Vicarious Liability was applicable here that: The Complainant did not provide any evidence of those who carried out the connection of the supply cable into the isolator and hence they could have been people other than the Respondent's employees. But even if they were the Respondent's employees, they acted in their private capacity since the supply cable belonged to the Complainant and they had no instructions to carry out such works. Therefore, the Respondent could not be help responsible for their actions and liable for the alleged burning of the Complainant's motor.

3. The Safety of the Consumer's Installations needed to be taken account as a possible cause of the accident. The installation was done in 1993 and the Complainant did not prove that it was regularly checked. Secondly, the photos taken by RW3 (REyyyyy-xxx) show/depict poor wiring. Thirdly, the earth resistance of 28.6 ohms (RE xxx), measured by RW3, was well above the maximum allowed value so as to protect the installation. Fourthly, the Complainant admitted that he was not a qualified electrician and did not seek professional diagnosis of the cause

of the motor burning. Fifthly and finally, the power supply had been off for about 10 months prior to the incidence. Hence without any routine maintenance, anything wrong could have happened during the long spell.

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 two issues agreed upon for consideration were:

1. Whether the Respondent was responsible for the alleged burning of the Complainant's motor which was part of his milling machine?
2. Whether the Complainant is entitled to the remedies sought from the Respondent?

We now consider the first issue; i.e. whether the Respondent was responsible for the alleged burning of the said motor.

. It is not in dispute that the Complainant was a lawful consumer of the Respondent's electricity in the name of **Mr. Obua Francis with an Account Number 200198785**. He operated a milling machine in Ngai Trading Centre for many years while connected to the Respondent's power supply.

It is also undisputed that sometime in 2012, the Respondent decided to relocate the said meter from the Complainant's building to a nearby electricity pole.

But the Respondent did not provide the details of the works i.e. when and by who carried out the relocation. The Complainant, quite rightly, did not know the names of the team members and unfortunately gave different dates of when the exercise was carried out. We, the Tribunal, believe that the meter relocation required a longer supply cable because of the increased distance from the meter to the isolator. We believe that the Complainant was requested to provide/buy the mentioned armoured, 4-core underground cable. [During his examination in chief, RW3 identified the cable from the photos he took and stated that (i) it belonged to the Complainant and (ii) it was installed in conjunction with the Complainant]. In the absence of the cable, the relocation exercise would have been incomplete and would have left the Respondent unconnected to the supply. We agree with RW3 that the connection of the cable at the meter on one end and the isolator on the other end was done by the Respondent's officials but in full collaboration with the Respondent. [During the cross-examination of RW3, the Complainant revealed that the relocating team begged him to let them make a hole through the wall so as to pass the cable through it].

We note that when the meter was relocated, power was left unconnected at the pole. This was because the Complainant had earlier been disconnected because of unpaid bills. The disconnection is deduced from the Complainant's exhibit **CExxx Consumer Information: 200198785 OBUA FRANCIS**".

It shows that the in the whole of 2012, the Complainant consumed energy only in one month of January when he had a bill of UGX 254,599.31 recorded on 1.2.2012.

It's indisputable that on 5.12.2012, the Complainant paid UGX 400,000 so as to reduce his outstanding bill [**CEyyyyy & zzzz**]. But without a Reconnection Order, or any other document, we are not sure whether the Complainant was to be legally

reconnected since his unpaid bill simply reduced to UGX 1,637,359.54. But that notwithstanding, the Complainant power was reconnected from the pole on Sunday (23.12.2012) but in his absence. This was clearly a private arrangement which was confirmed by the Complainant's own written statement "**The Complainant made it clear that other technicians came on Sunday to reconnect him from the pole...**".

We also note that the said Sunday was two days before Christmas and unless it was an emergency, there would not have been any normal deployment of workers to reconnect consumers on that day.

We believe that 26.12.2012, which was Boxing Day (the following day after Christmas), the Complainant was eager to resume work after about 11 months. He asked the machine operator to start the mill **without** first checking the wiring, switches and controls of the mill. We would like to believe that it is true that the motor stopped working soon afterwards and smoke came out of the isolator and motor.

Unfortunately, without a qualified/professional diagnosis, we cannot pinpoint to the cause. [The Complainant neither sought the services of a professional expert nor asked the Respondent's officials to go and carry out an investigation].

It is therefore conclusive that (1) the accident of the alleged burning of the Complainant's motor was caused on the side of the Complainant's wiring; most likely between the isolator and the motor i.e. a fault in the switchgear, wiring or the motor itself. (2) The Respondent's officials/workers , though participated in the installation of the cable, may or may not have left a loose connection that could have been the cause of the accident. (3) That the Respondent's officials/workers acted in a private arrangement to assist the Complainant install the cable and in particular connect it to the isolator. We therefore agree with the Respondent's submission that (1) the **Electricity (Primary Grid Code) Regulations 2003 (Grid Code)** exonerates them on any accident beyond the point of supply (2) the Respondent's workers acted in their private capacity and hence the Respondent cannot be held responsible for their actions. We also agree that the accident could have been avoided had the Complainant taken the precaution of checking his electrical installation prior to starting his mill especially since it had been off power for about 11 months and more so the wiring had been worked on as the cable was being installed.

Let's now consider whether the Complainant is entitled to the remedies sought from the Respondent:

The Complainant was seeking compensation, from the Respondent, arriving out of the first issue: that his motor got burnt because of the Respondent's workers actions. In other words, ever since his motor allegedly got burnt, he has been unable to operate his milling machine hence has lost a lot of business. Secondly that his second motor was confiscated by the Centenary Bank while he was attempting to revive his business. Therefore, in addition, the Respondent should pay for it as well as projected income from it. Naturally, he wanted the Respondent to pay for all the costs related to the suit i.e. transport, food and accommodation. He itemized the losses to be (i) Loss of two motors; UGX 10,500,000 (ii) Loss of business from December 2012 to 2015; UGX 95,770,000 (iii) Transport, food and

accommodation while pursuing the suit; UGX 1,665,000. The total request amounted to UGX 107,935,000. [CE VCV].

The Tribunal will not concern itself with the quantum but the principle. Having stated that the Respondent cannot be held responsible for the burning of the motor, it's deducible that the same cannot be held responsible for the consequences either. The Tribunal notes with sadness that the Complainant's business has been inoperable since December 2012. But nonetheless he CANNOT be compensated by the Respondent.

In conclusion, we realize that both parties have spent resources in pursuit of justice. We order that each party meets own costs.

So we order.

Dated at Kampala this \_\_\_\_\_ day of \_\_\_\_\_

**Charles Okoth-Owor**

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**Chairperson**

**Anaclet Turyakira**

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**Vice Chairperson**

**Eng. Dr. Moses K Musaazi**

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**Member**