

UGANDA / JUDGMENT

Batwawula v UMEME Limited (MISCELLENOUS APPLICANT EDT 1 of 2014) [2014] UGEDT 1 (30 September 2014) [2014] UGEDT 1

COURT

Electricity Disputes Tribunal

BEFORE

Charles Okoth Owor - Chairperson Electricity
Disputes Tribunal, Anaclet Turyakira, - Vice Chair
Person Electricity Disputes Tribunal, Eng. Dr. Moses
Musaazi - Member Electricity Disputes Tribunal

CASE / FILE NUMBER

MISCELLENOUS APPLICANT EDT 1 of 2014

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THE REPUBLIC OF UGANDA

IN THE MATTER OF THE ELECTRICITY DISPUTES TRIBUNAL

AND

IN THE MATTER OF A COMPLAINT BY BATWAWULA DAVID

\$V_s\$

UMEME LTD

APPLICATION FOR RECONNECTION NO ARISING OUT OF EDT NO. 01 OF 2014.

RULING OF THE TRIBUNAL.

The Applicant David Batwawula is unrepresented in his complaint EDT 1 of 2014 before the Electricity Disputes Tribunal (EDT). He is also not represented in this Application which arises from the aforementioned complaint EDT No. 1 of 2014.

On the other hand, the Appellant UMEME Ltd is represented by Counsel Allan Baguma from Shonubi, Musoke & Company Advocates. The Applicant/Complainant is not fluent in English and indeed does not appear to understand it. He communicates in the native language of "Lusoga". The tribunal has had to seek the assistance of an English /Lusoga interpreter in the person of Police Constable Wakwesa, who is attached to the security detail of the Ministry of Energy, himself a Musoga and apparently fairly fluent in English and Lusoga.

FACTS.

1. The Complainant, **Batwawula** is a consumer/customer of UMEME Ltd the Respondent in Iganga Town, holding Account No. 206884733 and operates a bar/ guest house business in Iganga Town, supplied electricity under the said Account Number.
- 2. The Respondent on 18th April 2012 disconnected the Applicant/Complainant from supply of electricity on the alleged ground that "meter tampered with, they put on superglue". The Applicant was asked to pay a fine of Ug Shs \$295,000/= and pay for energy loss of 7000 units among others (see Disconnection Notice addressed to Complainant dated 18/04/2012 from UMEME).
- 3. The Applicant/Complainant denies allegations made against him and consequently the liability to pay the fine and for the alleged 7000 units of power loss.
- 4. The Applicant/Complainant wrote to the Tribunal Registrar on 14/02/2014 requesting for an order for power reconnection, pending hearing and disposal of his complaint. He re-affirmed the same application in a letter dated 25th August 2014, addressed to the Registrar of the Tribunal.
- 5. The grounds to support his application were that:
- (i) His power was disconnected without testing the meter.
- (ii) He denies allegations made against him and the liability to pay a fine, buy a new meter and also pay for 7000 units of electricity allegedly lost through the tempering with the meter.
- He suffers and continues to suffer enormous losses due to the (iii) disconnection of power as he is loosing Clients and employees.
- (iv) Thefts of his property in the guest house as a result of the disconnection. Wis
- He had since failed to pay all his loans to Centenary Bank, Pride (v) Microfinance and BRAC.
- Generally, he could no longer afford to fulfill his responsibilities (vi) and,
- That in the interest of natural justice, power be restored (vii) urgently and supply continued until when the dispute arising from his complaint is determined.

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The Application for re-connection was formally presented before the Tribunal by David Batwawula on 15th September 2014 in person; which application he supplemented by an oral presentation. He largely re-stated the contents of his written application, adding thereto that;

- (i) Crane Bar and Guest House is his only business.
- (ii) He cannot pay the Creditor financial institutions. The total principal owing from him sums up to Ug Shs 12,000,000/=.
- (iii) Because of darkness in his place of business; a woman had recently been assaulted and bed sheets and blankets from the guest house were being stolen.
- (iv) He now uses candles which dirten the roof of the premises and at one time one resulted in a bed being burnt.
- (v) Police was threatening to close his business because of the resultant security threat from darkness.
- (vi) He was being out competed.

Mr. Baguma Counsel for the Respondent argued against the Tribunal issuing the reconnection order sought by the Applicant. His grounds were that:

1. An application for a reconnection order in the interim is an application for "a mandatory injunction", compelling the party against whom it is issued to carry out a positive act or acts; in this instance the reconnection of supply of electricity to the complainant pending the determination of his complaint, following the Respondent lawfully and within its authority disconnecting the power supply because of tampering with a meter.

Relying on a ruling in the Commercial Division of the High Court, **Miscellaneous Application No. 614 of 2012, Makubuya Vs UMEME Ltd** in which the Applicant similarly sought a reconnection order against the Respondent until the final disposal of the suit; he

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submitted that the Applicant had failed to meet the tests stipulated by the above case and thus failed to show cause for the mandatory injunction to be granted against his Client, the Respondent.

- 2. He argued that the grounds advanced by the Applicant were neither proved nor shown to be attributable to UMEME Ltd, the Respondent.

- 3. He submitted that even when the parties sought to negotiate to restore power pending the determination of the complaint; the Applicant had failed to pay 50% of the amount for the 7000 units of electricity loss, when given an opportunity by UMEME to do so as a condition for restoration of power in the interim. The 50% amounted to Ug Shs 1,900,000/= (One million nine hundred thousand only)

He argued that since the Applicant was unable to pay this amount at this stage, it unlikely that he would pay full amount in the event he lost in the final determination. The Respondent would be the end loser.

In reply the Applicant claimed that he had documents relating to his Bank loans, save that he had not carried them.

ANALYSIS/EVALUATION OF FACTS/EVIDENCE.

- 1. It is not in dispute that the Applicant's power supply was disconnected in April 2012 for allegedly tampering with the meter.
- 2. It is also not in dispute that the Applicant desires this supply to be re-connected pending the final determination of the dispute arising from his complaint.
- 3. The Applicant has laid down the grounds upon which he seeks an interim order of re-connection and on the face of it, they appear plausible.
- 4. The case of **Misc. Application: 614/2012 of Makubuya Vs UMEME Ltd** is very similar to this instant application in the orders that it sought to be obtained and the statements of Court therein are very instructive and helpful to the tribunal in determining this application, ^k Among aspects worth noting from the above quoted case are some of the following; ^f ⁵

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- (a) "The supplier of utilities uses the power of distress to access monies which owe on the supply. The power of distress is a selfhelp power employed by such others such as suppliers of utilities, likeelectricity to hold a user of the services at ransom until after their bills are paid. In such cases they determine what the amount in the bill is or ought to be.

..... electricity can collect dues without recourse to Courts" (page 3, \$2^{\text{nd}}\$ paragraph)

- (b) "In this case the applicant who dispute the bills has come to Court seeking various remedies and declarations among others that the amount billed is not the due..... mandatory injunction from the Courts" (read tribunal in this case. Page 3 paragraph 4).

- (c) The application does not indicate that the applicant is willing to pay some money. In an application of this nature, where the applicant $\rm{seeks}$ to get connected, there should be $\$$ an $\$$ understanding to pay sums of money..... the Court is very limited since it is mainly the Respondent to concede that the applicant pays in installments. Since the Respondent has to supply the electricity to the premises.....it would be difficult for the Court to impose on the Respondent conditions upon which power is to be restored to the applicant. It would have been better for the applicant to negotiate for better terms for restoration of power" *(paragraph 2 on page 4)*.
- (d) Referring to the case of **Kiyimba Kaggwa V Katende (1985) HCB** at page 23 which Quotes from a U. K case: **American Cynamid Company Vs Ethican Ltd (1975) IAIER** at page 504, the Court in the above case stated that; As far as the principles are concerned,
- $\$(i)\$$ All the Plaintiff needs to show is that it has an arguable case which merits judicial consideration.
- Secondly that the Plaintiff would suffer irreparable loss that $\$(ii)\$$ cannot be adequately atoned for by an award of damage.
- (iii) Thirdly if the Court is in doubt, it will decide the application on the balance of convenience" (paragraphs 2 & 3 on page 4) Court further stated that " the balance of convenience may require an undertaking of one of the parties to compensate the other party against whom the order is being made in case of injury" *(paragraph 4 on page 4)*
- 5.
- (a) What do we have in this instant application? It is true that the Applicant cannot operate or operate effectively and competitively without power. On the other hand, the Respondent seeks to recover what it deems is due to it as a supplier of electricity and that which it deems to have been irregularly consumed by not being metered! The Respondent was willing to re-connect power in the interim upon the Applicant paying 50% of the alleged energy loss value, amounting to Ug Shs \$1,900,000/\$ = and depending on the final determination, demand the balance or credit the Applicant with the sum paid.

The Applicant asserts that he is not in position to pay the said amount of Ug Shs \$1,900,000/\$ =, and seeks the tribunal's order to the Respondent to reconnect him.

In the circumstances, although we agree that the Applicant may be suffering loss of kinds alleged, yet no proof of this has been furnished and we hesitate to act on these statements.

Secondly, we recognize that the Respondent appears to be seeking to enforce compliance with its regulations although it may eventually turn out to be wrong in the manner and procedure it followed or omitted to follow or even in its decision to demand for the alleged energy loss.

We acknowledge that the Respondent has not offered to the Respondent a glimmer of hope that he will pay the amounts demanded if he were to lose the dispute. He even having failed to pay the 50% demanded as some sort of commitment in order for UMEME to restore power in the interim as offered in the negotiations by UMEME.

In the circumstances; we decline to order a reconnection of the power in the interim; the Applicant having failed to satisfy the tribunal that he meets the criteria upon which the tribunal would have based itself to grant such an order.

The tribunal stands ready to go ahead and listen to the dispute on its merits and make a determination. The tribunal promises that in such an event, it would make every effort to expeditiously hear and determine this matter.

Dated at Kampala this day of September 2014.

SIGNED BY:

CHARLES OKOTH-OWOR

***MUHCLEK* TURYAKIRA**

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VICE ^CHAIRPERSON

ENG. DR. MOSES MUSAAZI

MEMBER

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Prepared on 13 October 2026 · Esheria