THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

(CIVIL DIVISION)

CIVIL APPEAL NO. 111 OF 2017

(ARISING OUT OF ELECTRICITY DISPUTES TRIBUNAL EDT COMPLAINT NO.2 OF 2016)

UMEME LIMITED---------- APPELLANT

VERSUS

STANLEY TECHNICAL SERVICES LTD…….. RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts giving rise to this appeal are that the appellant disconnected the respondent's power supply arbitrarily on 7th December 2011. The reason advanced by the appellant for the disconnection of the respondent' electricity was because the respondent was not a member of Kiryatete Small Scale Industries Ltd following the commissioning of bulk metering.

The appellant in its defence contended that it was working in accordance with government policy of rolling out the meter bulk consumption program in Hoima and Masindi districts

The respondent filed a complaint with Electricity Regulatory Tribunal and the same was heard and determined in favour of the respondent in 2017. The appellant dissatisfied with this decision appealed to the High Court.

The appellant appealed to this court and set out 3 grounds of appeal as hereunder;

The grounds of appeal as they appeared in the Memorandum of Appeal were;

1. The learned members of the Electricity Disputes Tribunal failed to properly evaluate the evidence and came to wrong conclusions when they held that the disconnection of the respondent's power by the Appellant was unlawful.

2. The learned members of the Electricity Disputes Tribunal erred in law and fact when they awarded the respondent damages which were excessive.

3. The learned members of the Electricity Disputes Tribunal erred in law and fact in failing to correctly and objectively evaluate the evidence on record and thus arrived at a wrong decision.

The appellant prayed for the appeal to be allowed, the judgment of the Electricity Disputes Tribunal be set aside with costs to the appellant.

At the hearing of the appeal, the appellant was represented by Learned Counsel Gimanga Sam and the respondent was represented Learned Counsel Byarugaba Paul. In the interest of time the court directed that the matter proceeds by way of written submissions.

It is true that the duty of this Court as first appellate court is to re-evaluate evidence and come up with its own conclusion.

This position was reiterated by the Supreme in the case of ***Kifamunte Henry v Uganda SCCA No. 10 of 1997***, where it was held that;

> "*The first appellate court has a duty to review the evidence the evidence of the case and to reconsider the materials before the trial Judge. The appellate Court must make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it*."

I have taken the above principles into account as I consider the Appeal. I have considered the record of proceedings and the lower Court and have considered the written submissions of both parties.

Ground one

The learned members of the Electricity Disputes Tribunal failed to properly evaluate the evidence and came to wrong conclusions when they held that the disconnection of the respondent's power by the Appellant was unlawful.

The appellant is challenging the decision of the tribunal on the grounds that they ignored the evidence on record on the issue of wrongful disconnection of power of the respondent. That the evidence of RWI was ignored and not considered and specifically that; "it is not possible that UMEME did bulk metering without approval of ERA, it was a government policy that small scale industries use bulk power"

He contends that this evidence makes it clear that it was a general policy of government that small scale industries use bulk power.

The tribunal was supposed to determine which government policy did the appellant rely on to compel the complainant to joining Kiryatete Small scale Industries Ltd and configure all clients in Kiryatete Industrial area on the new system?

The tribunal noted that there was no evidence availed to show that the appellant had before disconnection notified the respondent who was a lawful consumer/customer about the new metering system and possibly its advantages.

The appellant contends that "we advised the complainant to purchase its own transformer: it was not my role to serve the company documents of Kiryatete on the complainant"

He submitted that the appellant while implementing government/company policy made it clear what the respondent ought to do in the circumstances. Further that there was no evidence before the tribunal adduced by the respondent that he was never informed as to justify the tribunal's decision on this issue. That above all there was legal requirement on the appellant to notify the respondent's intention to disconnect.

The appellant also challenges the decision on the tribunal for heavy reliance on the Electricity (Quality of Service Code) regulations 2003 since according to the appellant the same were not applicable to the matter before the tribunal. That regulation 9(1) of the said regulations was merely directory and mandatory in respect to the appellant and that the facts of the case had nothing to do with preventing interruptions of service.

The issues that arise from this ground of appeal are whether there was any government policy that required the respondent to be conscripted in the bulk metering system so as to disentitle them to a public service of electricity.

The appellant's witness testified that the Government of Uganda issued a directive through the Electricity Regulatory Authority requiring small scale businesses to join bulk metering.

The appellant entered into a memorandum with Kiryatete Small Scale Industrie Ltd.

However during cross examination, the same witnesses stated that; "*I donot have a copy of the directives, I have never looked at the directions. When we were advising the people to joining bulk metering and disconnection I did not serve a copy of the directives upon the affected people including the complainant*"

It was upon this evidence that the tribunal came to this finding that the respondent was not given a hearing in order to explain to them about the new system of bulk metering.

In addition, the tribunal was also alive to the fact that, the respondent lodged a complaint in the manner prescribed by the regulator, the respondent did not seem to take reasonable steps to avoid interruptions of the respondent's power in compliance with regulation 9 did not promptly respond to the complaint as required . Although the disconnection was effected on 7th December 2011, the official response from the respondent was in the respondent's letter dated 2nd August 2013 (one year & 8 months). It was in this letter that the final decision to the complainant's complaint was made.

I have perused the record and I have not seen any evidence from the appellant to show that the respondent was ever given a hearing after he lodged a complaint about the disconnection. The resultant decision made after 20 months was without a hearing.

The appellant ought to have accorded the respondent hearing on the complaint that had been lodged. To arrive at the decision refusing to connect the respondent to power after about 20 months was indeed an abuse of authority and the respondent's right to be heard. The appellant just ignored the respondent's complaint for that long and merely gave a response or decision as an afterthought.

The tribunal cannot be faulted for this finding that the respondent was given a hearing before the appellant arrived at this decision.

The appellant's witness alluded to a government policy as the basis for the denial of the respondent to get connection to power. The respondent's witness testified *that UMEME was forcing his company to join Kiryatete Small Scale Industries Ltd against their will*. And it was on this basis that they were issued with a disconnection order by UMEME Ltd Hoima Office.

The appellant's witness testified during cross examination that; "Iam not aware the criteria used in bulk metering in 2011. The bu*lk metering guidelines were approved in 2013. Iam not aware of ERA's approval to covert Kiryatete into a bulk metering zone."*

This therefore means that in 2011 when the respondent's power was disconnected there was no government policy or directive to comply with in order to deny the respondent power supply.

The law that regulated the disconnection of service is provided for in Electricity (Quality of Service Code) Regulations 2003

Regulation 17(3) thereof provides;

"Service may be disconnected for any of the following reasons:-

(a) Failure to pay a delinquent account or failure to comply with terms of a deferred payment plan for instalment payment on delinquent account;

(b) Violation of the licensee's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of non standard equipment, if a reasonable attempt has been made to notify the customer and the consumer is provided with a reasonable opportunity to remedy the situation;

(c) Failure to comply with deposit or guarantee arrangements;

(d) Without notice where a dangerous condition exists for as long as the condition exists; or

(e) Tampering with or by-passing the licensee's meter or equipment.

(4) unless a dangerous condition exists or the customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day when personel of licensee are not available to the public for the purpose of making connections and reconnecting service.

The respondent should only be denied a service by the appellant in accordance with the law or the regulatory legal framework. To that extent, the consumers should only be denied supply in circumstances spelt out in the specific relevant laws, regulations and policies.

The appellant in handling the respondent's complaint never complied with the regulatory framework, policy or regulations. The said government policy was never brought to court and the one alluded to came in existence in 2013.

The respondent company could not be conscripted a private limited liability company in order to be connected to the power and indeed the respondent was against the idea. The respondent's right to enjoy the public service could be dependent on the whims and mercy of a third party not provided under the law. The memorandum that was made between the appellant and Kiryatete Small Scale Industries was only binding on the parties and members of the company.

I agree with the decision of the tribunal that the disconnection of the respondent power supply by the appellant was manifestly unlawful.

In the final result for the reasons stated herein above this appeal fails and is dismissed with costs in this court and in the court below.

It is so ordered.

SSEKAANA MUSA
JUDGE
16th /08/2018