

**ENERGY AND WATER UTILITIES REGULATORY AUTHORITY**

**(EWURA)**

**COMPLAINT NUMBER: EWURA SN.71/309/23**

**ORYX GAS (T) LTD.....COMPLAINANT**

**VERSUS**

**MKUCHA GENERAL ENTERPRISES.....RESPONDENT**

---

**HEARING AWARD**

---

*(Made by the Board of Directors of EWURA at its 165<sup>th</sup> Ordinary Meeting held at  
Dodoma on the 28<sup>th</sup> day of June, 2021)*

**1.0 Background Information:**

On 1<sup>st</sup> April 2020, Oryx Gas (T) Limited ("the Complainant") lodged a complaint to the Energy and Water Utilities Regulatory Authority ("the Authority") against Mkucha General Enterprises ("the Respondent"). The Complainant is complaining about the Respondent's illegal act of collecting and handling its cylinders from different agents in Mtwara and Lindi Regions and exchanging them with O-Gas cylinders without the Complainant's consent and further, taking them out of the Mtwara and Lindi markets.

The Complainant further claims that the Respondent is an O-Gas' super dealer in Mtwara and Lindi Regions who collects and removes the Complainant's cylinders from the market with the aim of taking them out of business so that the Respondent can be the sole distributor of gas cylinders in those Regions. The Complainant alleges that on 29<sup>th</sup> March 2020 in Mkuti

Area in Masasi District, a vehicle with an O-Gas sticker carrying Oryx Gas cylinders, was seized. The vehicle was transferring the cylinders to a different vehicle that was close to a warehouse that stores O-Gas cylinders which would then transport the cylinders to Dar es Salaam. The vehicle with registration number T227 DNZ had loaded 44 six-kilogram cylinders and 13 fifteen-kilogram cylinders belonging to the Complainant, Taifa Gas and Camel Gas.

Furthermore, the Complainant states that on 30<sup>th</sup> March 2020, he was informed by a Good Samaritan that more of the Complainant's cylinders were hidden in a warehouse owned by the Respondent in Jida Area in Masasi District. The Complainant further states that after being so informed they reported the matter to the Police and together with the Police and Ward Executive officials, they headed to the warehouse in order to investigate. The Complainant further states that at the alleged warehouse they found gas cylinders hidden within the fence of the said warehouse and not in the warehouse itself. The Complainant found 23 six-kilogram cylinders and 3 fifteen-kilogram cylinders belonging to the Complainant as well as cylinders belonging to Taifa Gas and Tanzania Oxygen.

Consequently, the Complainant prays for revocation of the Respondent's licence, issuance of a harsh warning and a fine that will deter the Respondent from performing such illegal acts in future and monetary compensation for loss suffered.

Upon receipt of the complaint, the Authority ordered the Respondent to submit their defense to the complaint within twenty-one (21) days as required by the then Energy and Water Utilities Regulatory Authority (Consumer Complaints Handling Procedures), Rules, GN Number 10/2013. On 22<sup>nd</sup> April 2020, the Respondent submitted the reply to the complaint and disputed the allegations made by the Complainant. In its defence the Respondent also raised a preliminary objection on a point of law, that the

Complainant has no *locus standi* which was dismissed upon production of an introduction letter in line with Rule 17 (3)(b) of GN. 428/2020. In its defense, the Respondent states that:

- (a) they are super dealers of O-Gas;
- (b) they are not collecting or transporting gas cylinders belonging to the Complainant outside the Mtwara and Lindi Regions or any other Regions in Tanzania;
- (c) the vehicle with registration number T227 DNZ which was allegedly found carrying cylinders belonging to other companies do not belong to the Respondent but the Respondent agrees that the vehicle has been previously used by them to distribute gas cylinders to its customers. The Respondent further states that during hiring of the said vehicle, he has never used it to transport cylinders belonging to the Complainant. The Respondent is not responsible for the trips made by the owner of the said vehicles outside the agreement with the Respondent. The Respondent agrees that he has sought the vehicle's owner's permission to place O-Gas stickers on the vehicles for branding and marketing purposes;
- (d) that on 30<sup>th</sup> March 2020, Mr. Gamu Kimolo, claiming that he was representing the Complainant together with Police Officers, invaded the Respondent's warehouse, alleging that there were cylinders belonging to the Complainant but after their search, they did not see any gas cylinders belonging to the Complainant. The cylinders that were found at the warehouse did not belong to the Respondent and that the Respondent does not know the owner of the said cylinders. There are other warehouses which are not supervised by the Respondent;
- (e) the complaint be dismissed for lack of merit; and
- (f) costs of the case and any other reliefs the Authority may deem fit and appropriate.

Efforts to mediate the parties were taken under the supervision of the Complaints Unit of the Authority and proved futile and thus the matter was referred to the Division of the Authority for hearing.

## **2.0 Hearing Stage:**

On 9<sup>th</sup> and 10<sup>th</sup> July 2020, 31<sup>st</sup> August 2020, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> September 2020, the matter came for hearing at Cashewnut Hotel in Mtwara Region and both parties appeared. The Complainant was represented by Mr. Alex Peter Msalenge, the Complainant's Legal Officer and the Respondent was represented by Ms Gladys Edes Tesha, the Legal Officer of the Respondent. At the hearing, the following issues were framed for determination:

- (a) whether the Respondent's conduct of LPG Operations in Mtwara Region violate the laws governing LPG business operations;*
- (b) whether the Respondent exchanged the Complainant's cylinders with other retailers and removed them from Mtwara Region market without the Complainant's consent;*
- (c) whether the Respondent suffered loss as a result of the Respondent's conduct; and*
- (d) reliefs to parties, if any.*

During hearing, Mr. Mohamed Fundi, the Complainant's Sales Manager, stood as the first witness (CW1), Mr. Gamu Kimolo, the Complainant's Sales Representative, stood as the second witness (CW2), PC Hamduni Mdoka Maulid, Police Detective stood as the third witness (CW3), Paulina Gabriel Mbawala, Ward Executive Officer stood as the fourth witness (CW4). The Complainant's side tendered a CD with 4 clips showing handling of cylinders by the Respondent which was admitted as Exhibit C1, photographs showing collected cylinders were admitted as Exhibit C2. The Respondent on the other hand called two witnesses namely Mr. Shadily

Hussein Athuman, a Businessman and Ms Vumilia Paul Macha, the Respondent's Business Supervisor.

### **3.0 The Decision:**

In arriving at our decision, we have considered the applicable law including the EWURA Act Cap. 414, the Petroleum Act Cap 392, the then Petroleum (Liquefied Petroleum Gas) Rules, GN. No. 376 of 2018 ("the LPG Rules") and the then Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2013 (GN No. 10/2013). We have also examined the oral testimony of the witnesses together with the tendered evidence, exhibits and the Respondent's closing submissions. Our decisions on the issues raised during hearing of the matter are as follows:

#### **Issue No. 1: Whether the Respondent's conduct of LPG Operations in Mtwara Region violate the laws governing LPG business operations**

In determining this issue, we have evaluated the testimonies of the Complainant and Respondent's witnesses as well as the parties' exhibits. It is trite law that he who alleges must prove and, in this matter, the Complainant is duty bound to prove, on the balance of probabilities, indeed that the alleged conduct by the Respondent violated the laws governing operations of LPG business.

CW1 testifies to the effect that the Complainant is a reputable company supplying LPG products to customers and that the Complainant's market has expanded to townships and remote areas. CW1 also testifies that the Complainant's key objective is to provide quality, reliable and accessible services to all its customers. CW1 further testifies that a super dealer must have a super dealership agreement with the wholesaler allowing a super

dealer to sell its gas to customers and that CW1 further states that in an effort to expand its market base, it promoted its products throughout the region but the results were disappointing. As a means of addressing this challenge, the Complainant conducted a market survey and found out that his competitor namely the Respondent was trading off its cylinders.

CW1 further testifies to the effect that an investigation team was formed comprising of the Complainant's Head of Commercial, Sales Representatives and other officers from Dar es Salaam. The investigation revealed that the Complainant's competitor was collecting and storing the Complainant's cylinders keeping them out of the market. CW1 testifies that on 28<sup>th</sup> March 2020, the Complainant was tipped off that the Respondent was seen collecting the Complainant's cylinders in Masasi District. After receiving the tip off, CW1 states that he informed Mr. Gamu Kimolo, the Complainant's Sales Representatives for Mtwara and Lindi Regions to follow up on the matter.

CW1 testifies that Mr. Kimolo followed up on the tip and found a truck carrying, amongst others, the Complainant's cylinders without the Respondent ever having a dealership agreement with the Complainant. CW1 states that Mr. Kimolo informed him that he confronted the driver of the truck who admitted to have been working for the Respondent. CW1 further testifies that the Respondent's conduct damages the Complainant's brand due to compromised service quality leading to loss of customers.

CW1 argues that they have authorised agents who are responsible for handling their cylinders and that a super dealer must have a valid business licence, EWURA licence, proof of the ability to purchase 2000 cylinders as a start-up and possess a storage facility large enough to store 2,000 cylinders. CW1 further testifies that he knows the Respondent as a business operator in Masasi District as well as an O-Gas super dealer in Mtwara Region and

that the Complainant does not have a business relationship with the Respondent. CW1 concludes that the Respondent ought to be warned of his conduct or have his licence suspended and pay a compensation of TZS 250,000,000 for loss suffered by the Complainant and costs of the complaint.

When asked during hearing on when the Complainant discovered that their cylinders were being removed from the market and how the exchange of the Complainant's cylinders was being done, CW1 stated that this malpractice was discovered in 2018. In exchanging cylinders, when a customer approaches a dealer for a refill of his cylinder, the dealer accepts any empty cylinder including that of the Complainant in exchange for a cylinder of a brand supplied by the dealer thus retaining the exchanged cylinders. When further asked as to why the Complainant was concerned about the collected and refilled cylinders, CW1 stated that collection and refill of the cylinders by unauthorised persons poses as a safety risk to consumers and property and any wrong or inappropriate handling of its cylinders would reflect negatively to the Complainant.

On his part, CW2 testifies to the effect that on 28<sup>th</sup> March 2020, he received a phone call from his supervisor in Dar es Salaam informing him about the alleged collection of the Complainant's cylinders by unauthorised persons in Masasi District. CW2 further states that he was directed to follow up on the matter which he did and went to Masasi to investigate. During the investigation, CW2 saw a vehicle with registration number T227 DNZ transporting the Complainant's cylinders and that the vehicle had stickers bearing O-Gas logo and phone numbers. To CW2's surprise, the vehicle was transporting the Complainant's cylinders together with those belonging to Mihan and Taifa Gas. CW2 further states that they lost track of the vehicle only for it to resurface in Tandale Area in Masasi carrying cylinders belonging to the Complainant and Lake Gas.



CW2 testifies further to the effect that he followed the vehicle discreetly to Jida Area in Masasi and he parked six meters away from it observing the ongoing activities. CW2 states that at the scene he saw the vehicle offloading cylinders into another vehicle and he recorded the events using his smartphone and thereafter called the Police. When the Police arrived, they surrounded the area and seized 56 cylinders belonging to the Complainant although the seized vehicle had 216 cylinders. However, at that time, the driver had fled the scene so they interrogated the shop owner one Rifati Sabihi instead.

CW2 further testifies that after the interrogation, on 29<sup>th</sup> March 2020, the Complainant received a tip that its cylinders were found at a warehouse owned by the Respondent. The informer told CW2 that he had seen other cylinders hidden behind the warehouse near the water tanks. CW2 testifies that he informed the Police so that they could follow up on the matter and the Police made their way there together with CW2, Jida Ward Chairperson and two of the Respondent's staff. When the team arrived at the warehouse, they did not find any cylinders belonging to the Complainant inside the warehouse.

CW2 testifies to the effect that whilst at the warehouse, he received another tip from a Good Samaritan that there were cylinders belonging to the Complainant at the warehouse's backyard and upon inspection, they found many of the Complainant's cylinders at the back of the warehouse by the septic tank close to the toilets. Asked during examination-in-chief, as to who occupies the backyard of the warehouse, CW2 stated that it was occupied by the Respondent and another individual storing cashew nuts.

When further asked as to why the Respondent had been pinpointed as being in possession of the Complainant's cylinders whilst the warehouse was used by several individuals, CW2 stated that the informer had told him that he had seen the Respondent's staff removing the cylinders from the warehouse to



the backyard area; which is blocked off by water tanks which are in the same compound. CW2 further stated that they found many cylinders belonging to Mihan and Taifa Gas but 27 belonged to the Complainant. CW2 further testified that the Police interrogated the Respondent's staff who denied owning the cylinders and mentioned one person with the name Chale as the owner.

CW2 testifies that the Police Officer asked the Respondent's staff whether any of the occupants of the warehouse operate an LPG business to which they replied in the negative; and further states that it is only the Respondent who conducts LPG business in the area. The Police Officer then arrested the Respondent's staff for further investigation and before leaving the warehouse, the Police seized a total of 83 cylinders. CW2 tendered Exhibit "C1" which is a CD showing the Respondent's staff offloading cylinders onto the ground and stacking them outside a shop, a clip of the Respondent's vehicle back to back with another truck as well as clips of the cylinders found at the warehouse. CW2 also tendered photographs showing the Respondent's staff offloading different cylinders onto the ground as well as those stacked at the warehouse which were admitted as Exhibit "C2".

CW2 stated as shown in the video, cylinders were being thrown on the ground contrary to industry practices that require proper handling and arrangement of cylinders for transportation as well as being transferred from one truck to another. When asked by the Complainant's counsel as to what relationship the Complainant has with the Respondent, CW2 stated that the Respondent is a super dealer for O-Gas owned by Oilcom (T) Ltd in Mtwara Region and does not have a dealership agreement with the Complainant.

CW2 concluded that other competitors had complained about the Respondent's conduct as he is using unfair practices in order to get an unfair

CW4 as the Ward Chairperson, signed the search and seizure form and allowed the Police to proceed with the seizure. When asked by the Complainant's counsel as to who the occupier of the warehouse is, CW4 stated that Mkucha, a well-known businessperson and an O-Gas super dealer is the occupier of the warehouse. When asked to describe the surroundings where the cylinders were found, CW4 stated that the cylinders were near a water tank close to the septic tank between the Respondent's and Sayona's warehouse. When cross examined by the Respondent's counsel as to who had hidden the cylinders by the septic tank, CW4 stated that she didn't know who hid them there. When asked as to how many suppliers operate LPG business within her Ward, she replied that she only knows the Respondent.

CW5 testifies to the effect that in March 2020, the Police visited her office and informed her that they were planning to carry out a search for illegally acquired cylinders stored at a warehouse in her area. CW5 went with the Police to the warehouse and found another Police Officer with 4 other people. CW5 stated that initially they searched the area and found only cylinders belonging to the Respondent, however, on the way out they came across other cylinders, some of which belonged to the Complainant. When asked as to the exact location of the cylinders, CW5 stated that it was as if the cylinders were hidden near where the septic tanks were. When cross examined by the Respondent's counsel as to who is the occupier and the owner of the warehouse, CW5 stated that she knew neither the owners nor the occupiers as it was her first time to visit the place.

On its part, the Respondent's first witness RW1 submitted to the effect that he is a businessman who sells LPG from different companies such as Oryx Gas, Taifa Gas and Mihan Gas and has been doing business with the Respondent since 2017. RW1 states that he sources Oryx Gas cylinders from someone else and not the Respondent and that the Respondent has never

supplied him with Oryx Gas cylinders. RW1 states that he sells more O-Gas cylinders than Oryx gas cylinders as they are more affordable and profitable to him. When cross examined by the Respondent's counsel as to whether he had ever exchanged the Complainant's cylinders with the Respondent, he replied in the negative. When further examined by the Respondent's counsel to whether he had ever exchanged the Complainant's cylinders for O-Gas cylinders he again replied in the negative.

RW2 testifies to the effect that she has been the Respondent's supervisor since 2015 in Lindi and Mtwara Regions supplying their products using distribution vehicles and motorcycles in some areas but do not own any vehicles. When asked by the Respondent's counsel during examination-in-chief as to who controls the hired vehicles once the car hire agreements end, RW2 stated that the vehicles belong to one Mr. Chivaranga and he has full control of what happens to his vehicles once the agreement comes to an end.

When asked who coordinates and oversees the vehicle routes, RW2 stated when a vehicle is hired, either the Respondent's Manager Robert or the Respondent's marketing and distribution officers accompany the vehicle to oversee distribution of the cylinders to customers, RW2 stated that the driver of the vehicle is released by Robert upon returning to the dispatch station and reports delivery of the cylinders. In addition, RW2 stated that her role is to control the cylinder exchange process where the delivered cylinders are filled with LPG and empty ones are handed over to the distributor. They exchange and sign a dispatch note from her and delivery note from the distributor.

RW2 testified that on 30<sup>th</sup> March 2020, her employees told her that the Police wanted to search their store and after the search the Police did not find any of the Complainant's cylinders at the store. When asked by the Respondent's counsel as to whether the Police found the Complainant's cylinders at the

warehouse, she stated that no cylinders were found at their warehouse but some were found behind the toilet outside the warehouse. In responding to the question by the Respondent's counsel as to when the Respondent had last hired the vehicle, RW2 said 27<sup>th</sup> March 2020 when she was distributing 200 LPG cylinders at Mangaka, Tunduru.

RW2 stated that no car was hired by the Respondent on 29<sup>th</sup> March 2020 and that once a delivery is complete, all stickers bearing the Respondent's logo and contact details are removed. When cross examined as to whether the Respondent had a licence from EWURA, RW2 said that the Respondent did not have it as they had made an application in 2018. When asked further whether by not having a valid EWURA licence that the Respondent was operating illegally, she did not provide a response. During cross examination, RW2 stated that she did not remove the stickers from the vehicle because they were anticipating distributing more cylinders using the same vehicle.

Moreover, the Respondent's counsel stated in her final submissions that the Respondent has a dealership agreement with Oilcom (T) Ltd and that the Respondent does not engage in distribution of LPG from any other supplier than Oilcom (T) Ltd. Furthermore, the Respondent stated that they have applied for a licence from EWURA and EWURA officials have concluded inspection of their facility and inform them that they qualify for issuance of a licence. However, the Respondent followed up with the Authority to be informed that the online system used to make the application has been changed and therefore the Respondent would have to start the application afresh.

We have examined all the testimonies and evidence tendered by the parties and we are very thankful for the submissions. In order to determine whether or not the Respondent's conduct violated the law, we have to look at the laws that govern LPG operations namely the then Petroleum (Liquefied Petroleum

Gas Operations) Rules, GN. No. 376/2018 and particularly Rules 24 ,34 and 47 of the said Rules. For avoidance of doubt we quote the said Rules hereunder:

*24. -(1) A supplier and a dealer shall, while storing, keeping, handling, conveying, using or disposing of LPG, take such precautions and exercise such care as may be reasonable under the circumstances in order to:*

- (a) avoid endangering the safety or health of any person, or the safety of any person's property; and*
- (b) prevent risk of significant environmental harm.*

*34.-(1) A super dealer shall not conduct LPG distribution business, unless he has entered into a dealership Agreement with a wholesaler and that, he will only procure LPG from the wholesaler whom he has a contract with.*

*(4) A wholesaler and a super dealer shall execute and make available to the Authority upon request the dealership signed.*

*47.-(1) A person shall not engage in any activity that may deceive, mislead, or have the effect of deceiving or misleading the customer, with respect to-*

- (a) the brand name of the LPG; and*
- (b) LPG's composition, grade or quantity.*

Looking at the evidence given by both parties and in further analysis and summing up from the testimonies received, we are satisfied that the Respondent does not have a business relationship with the Complainant and thus no dealership agreement between the two. We have however noted that, regarding the EWURA licence, the Respondent has submitted its application and communication with the Authority with regards to improving

the Respondent's infrastructure is ongoing. The Authority is also in the process of ensuring that all super dealers have valid licences.

Based on the foregoing, any act by the Respondent in dealing with the Complainant's cylinders contravenes Rule 34 (1) of GN. No. 376/2018. Exhibit C1 and C2 is clear evidence of unauthorised and inappropriate handling of LPG cylinders by the Respondent contrary to Rule 24 (1) of GN No. 376/2018 which requires precaution and care to be exercised when handling LPG cylinders.

It is our considered view that, there was foul play by the Respondent in conducting LPG business in Mtwara Region. The Respondent admitted in its final submissions that they do not engage in distribution of LPG cylinders from any other wholesaler than Oilcom (T) Ltd. However, it is obvious from the evidence tendered that the Respondent was in possession of cylinders from at least 3 different companies including the Complainant. The fact that the Respondent does not have a dealership agreement with the Complainant means that he did not have a right to be in possession of the Complainant's cylinders or any others for that matter. Had the Respondent been dealing only with O-Gas cylinders, he wouldn't have been in possession of the other companies' cylinders which means that he was illegally in possession of all the cylinders that did not belong to O-Gas contrary to Rules 34(1) of GN. 376/2018. Both exhibits tendered by the Complainant show a complete disregard for proper handling of the cylinders whilst being transferred from the vehicle to the store. No reasonable care was taken when handling the cylinders from their storage in the vehicle to their transferring to the shop contrary to Rule 24 (1) of GN. No. 376/2018.

The investigation of the warehouse revealed that the Complainant's cylinders were placed near the toilets behind a tank. Looking at the circumstances, it would appear that the cylinders were being concealed, hindering their easy discovery so that they would not be visible from the

main warehouse. The storage area where the cylinders were hidden is neither appropriate nor safe for storing LPG cylinders. The fact that the Respondent is the only dealer of LPG in that area and in that warehouse draws an adverse inference that the Complainant's cylinders found at the warehouse were collected and stored by the Respondent.

The general conduct by the Respondent in this matter is suspicious and dubious in nature, from collecting cylinders that do not belong to him, to hiding them and disposing of them to the unknown location. Rule 47 (1) prohibits, *inter alia*, engaging in any activity that may deceive, mislead, or have the effect of deceiving or misleading the customer, with respect to the brand name of the LPG. The Respondent's conduct is deceptive, having the intention of taking the Complainant out of the LPG market in the respective Regions by deceiving customers as to the non-existence of the Complainant's cylinders thus necessitating the customers to purchase or exchange all other cylinders except the Complainants.

Based on the foregoing, we are of the opinion that the Respondent's conduct violates the law, to wit Rules 24, 34 and 47 of GN. No. 376/2018.

**Issue No.2: Whether the Respondent exchanged the Complainant's cylinders with other retailers and removed them from the Mtwara Region market without the Complainant's consent**

As per our holding in the first issue, the Respondent does not have a dealership agreement with the Complainant therefore anything done to or with the Complainant's cylinders, was done without the Complainant's consent. CW2 stated that after being tipped on the whereabouts of the Complainant's cylinders, he followed the Respondent's vehicle which was carrying various companies' cylinders. CW2 tendered two key pieces of evidence, the CD showing videos of the Respondent's staff mishandling the



Complainant's cylinders. Moreover, the CD showed the Respondent's truck back to back with another truck indicating that one truck was delivering something to the other. CW2 also tendered corresponding pictures clearly showing the labelled truck, the mishandled cylinders and stacks of cylinders hidden at the back of the warehouse.

CW3 also testified to the effect that he also saw the Complainant's cylinders amongst others, being offloaded from the Respondent's truck and later seized them. CW3 further testified that both Mr. Sabihi and Amadeus who had confessed to have taken the Complainant's cylinders to the warehouse, led them to the warehouse where the Complainant's 26 cylinders were being hidden after realising that they were being followed by the Complainant. CW3 testified that he interrogated Amadeus who confessed that he had collected the cylinders whilst knowing that it was against trade practices. Both CW4 and CW5 witnessed the presence of the Complainant's cylinders which were hidden at the warehouse.

On the other hand, RW1 testified to the effect that the Respondent had neither supplied him nor exchanged with him, the Complainant's LPG cylinders. The Respondent in its final submissions, submitted that the Complainant failed to link the individuals involved in the matter and the Respondent. The Respondent argued that in order for the Respondent to be vicariously liable, the acts of the persons involved, must have been done on behalf of the Respondent or under instructions of the Respondent. The Respondent also argued that the fact that there were stickers bearing the O-Gas logo, doesn't mean that at that particular time, the vehicle was being used by the Respondent. We were not moved by RW2's testimony that, when hiring vehicles, they place stickers on the vehicles for marketing purposes and that at that time, they had not removed the stickers because they were planning on distributing more cylinders. Ordinarily, if a vehicle has a particular sticker of a particular company, then at that particular time and in

the absence of any contrary information, the vehicle was being used by that company and in this case, by the Respondent.

It is our view that the Respondent's act of collecting the Complainant's cylinders without his consent draws an adverse inference that the Respondent was up to no good. The question to ask ourselves here, was the Respondent intending to steal those cylinders and dispose them or use them for illegal decanting? As per the good petroleum industry practices, the owner of cylinders is the Company and consumers only hire the same and thus the act by the Respondent to collect and own the Complainant's cylinders without the latter's consent is tantamount to theft. With this, we leave it at the liberty of the Complainant to consider pressing criminal charges against the Respondent to the appropriate authorities.

During hearing, the Respondent did not raise the issue of the individuals involved in this matter not being known to them. Therefore, we disregard the Respondent's submissions on vicarious liability of the Respondent. CW3 testified further that Amadeus and Mr. Sabihi confessed to have taken the cylinders to the warehouse, and thus leaving no doubt that the Respondent collected the Complainant's cylinders and send them to the location and for the purpose best known to themselves. We are not entirely sure where the cylinders were destined to and for what purpose; however, for whatever reason, the acts by the Respondent were for no good reason.

In conclusion, it is our considered view that the Respondent exchanged and collected the Complainant's cylinders without the latter's consent; however, we are unable to determine on where such cylinders were taken and for what purpose.

**Issue No.3: Whether the Respondent suffered loss as a result of the Respondent's conduct**

CW1 testified to the effect that the Complainant has suffered financial loss as a result of the Respondent's conduct. CW1 claimed that if the Complainant's cylinders are removed from the market, sales will drop, and hence the drops in revenue. When cross examined by the Respondent's counsel on what were the Complainant's sales volume, CW1 said that usually there are low and high seasons in business. When further cross-examined by the Respondent's counsel on the cost of a 6kg and 15 kg cylinder, CW1 stated that a 6kg cylinder sells at TZS 35,000 and 15kg for TZS 80,000.

In addition, CW1 when further cross-examined by the Respondent's counsel on whether they had investigated on how their competitors improve sales, CW1 stated that their competitors use the same marketing and distribution strategies as the Complainant only that they also exchange the Complainant's cylinders which is a malpractice. During re-examination, CW1 stated that sales started to drop in 2019 and that their sales depend on the number of cylinders sold and refilled. CW1 testified that if a certain number of cylinders are put into the market but few are returned for refill, that is obviously a loss. CW1 further testified that currently, the cylinder circulation is low whilst many were put into the market. In its final submissions, the Respondent admitted that the Complainant might have suffered loss but the same was not due to the Respondent's conduct but was due to the Complainant's inability to compete in Mtwara market.

It is our considered view that when illegal and anti-competitive practices are used by a competitor, this creates loss and a disadvantage to the other competitor and inevitably, one of the consequences includes financial loss. As per our holding in the first and second issue, it is no doubt that the Respondent has illegally exchanged and collected the Complainant's cylinders and took them to unknown locations and for the purpose known to themselves. With only the aforementioned violation, the Complainant is

entitled to some reliefs. However, in this matter, we have observed that the Complainant opted not to come up with the computation on the loss suffered as a result of the Respondent's violations. Based on the foregoing and in a final analysis, it is our considered view that the Complainant has suffered loss as a result of the Respondent's conduct.

**Issue No. 4: What are the reliefs to the parties, if any?**

Having decided on the three issues above, we now come to the reliefs the parties are entitled. The Complainant is praying for Orders to compel the Respondent to pay TZS 250,000,000.00 as compensation for loss suffered due to the Respondent's conduct, payment of fine for conducting LPG business without a dealership agreement as well as revocation of his business licence and costs of the complaint. The Respondent on the other hand prayed for dismissal of the complaint.

Although the Complainant has suffered loss as a result of the Respondent's conduct as determined in issue number 3, he has failed to establish the specific damages so suffered since specific damages need to be proved specifically. The Complainant did not provide any documentation or explanation to substantiate the claimed TZS 250,000,000.00. There was no sales report to justify the figure or anything indicating the value of the lost or removed cylinders. During the hearing, the Complainant did not provide information as to how many cylinders had been put into the market and how many had been removed by the Respondent. It is therefore decided that the Complainant has suffered only general damages due to the Respondent's conduct.

With regards to the fine for conducting LPG distribution business without a dealership agreement, Rule 37 of GN. 376/2018 states that and we quote:

*37. Any person who contravenes the provisions of rules 34 (1) and (2) commits an offence and shall on conviction be liable to a fine of not less than five million shillings or imprisonment for a term of not less than three years or to both.*

We have considered the gravity of the offence and the associated risks that the Respondent was posing not only to the public but also to the industry and we are of the opinion that the Respondent is liable to pay a fine for conducting LPG business without a dealership agreement with the Complainant. We are further of the settled view that the Complainant is entitled to some reliefs against the Respondent in order to deter other culprits from engaging in similar illegal activities. In view of the foregoing, the Respondent is ordered to immediately desist from exchanging and collecting the Complainant's cylinders and to pay to the Authority a fine of TZS 5,000,0000 for conducting LPG business without a dealership agreement with the Complainant. In further holding, we award to the Complainant general damages of TZS 20,000,000 and costs of the complaint.

**GIVEN UNDER SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 28<sup>th</sup> day of June 2021.



.....  
**GERMANA QORRO**

**SECRETARY TO THE BOARD**