THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

(EWURA

COMPLAINT NUMBER: SN.71/472/224

SHABAN GUGU AND SIX OTHERS .....COMPLAINANT

VERSUS

TANGA WATER SUPPLY AND SANITATION AUTHRORITY.....1ST RESPONDENT

NATIONAL HOUSING CORPORATION.....2ND RESPONDENT

HEARING AWARD

(Made by the EWURA Board of Directors at its 159th Ordinary Meeting held on the 29th day of December, 2020)

1.0 Background Information

On 10th August, 2020, Mr. Shaban Gugu and Six others of Chumbageni Area in Tanga City ("the Complainant") lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") against the Tanga Water Supply and Sanitation Authority ("TANGA WSSA") ("the 1st Respondent"), and National Housing Corporation (NHC) (the 2nd Respondent) seeking orders to compel the Respondents to take responsibility jointly or

severally for operation and maintenance of the sewer line where the Complainants are connected.

The Complainant states that he and his fellow residents of the former TPA staff houses at Chumbageni were connected to a sewer line constructed by the 2nd Respondent NHC. The Complainant explains that the said sewer line was constructed by NHC to cater for its tenants located at Nguvumali and Chumbageni apartments. However, since the line passes through the Complainant's residence they applied for and were permitted to connect. The Complainant continues to state that the said sewer line empties into the 1st Respondent's infrastructure about 1.2 kilometres from Nguvumali. The complainant states that the said sewer line has been experiencing frequent blockages due to its deteriorated condition particularly due to some of its open chambers which allow in debris, sand and other rubbishes swept in by rain water and road sweepers. The Complainant further states that for many years they have been incurring own costs to unblock the sewer. The Complainant adds that neither the 2nd Respondent who constructed the line nor the 1st Respondent Tanga WSSA is ready to bear the responsibility and cost of repair and maintenance of the said sewer infrastructure. The Complainant claims that they had several meetings and exchange of several correspondences between the Complainants on the one hand and both Respondents on the other but no compromise has been reached. The Complainant therefore filed this complaint to the Authority seeking orders to compel the 1st or 2nd Respondent or both Respondents jointly to take responsibility for operation and maintenance of the sewer line.

Upon receipt of the complaint, the Authority ordered the Respondents to submit their defense to the complaint within twenty-one (21) days as required by the Energy and Water Utilities Regulatory Authority (Consumer

Complaints Handling Procedures), Rules, G.N. Number 428 of 2020, via summons to file defense issued on 17th August, 2020.

On 26th August, 2020 the 1st Respondent filed its defense stating that the sewer line complained about was constructed and is owned by the 2nd Respondent. The 1st Respondent stated that the said sewer line was constructed to serve the 2nd Respondent's tenants at Nguvumali and Chumbageni apartments but also it now includes several residents of Chumbageni such as the Complainants before it connects to the 1st Respondent's infrastructure. The 1st Respondent went on to state that the sewer line in issue was constructed below standard a fact which causes frequent blockages and inconvenience to users. The 1st Respondent claimed that they have had several meeting with the 2nd Respondent and the Complainants on the matter but no long term solution has been reached. The 1st Respondent claims further that they have advised the 2nd Respondent on several occasions over rehabilitation of the sewer line in question before the 1st Respondent can take over the same but their advice has always been ignored by the 2st Respondent. The 1st Respondent concluded that they are not responsible for the said sewer line as it was privately constructed and does not conform to their standard for them to take it over and operate the same.

On the other hand the 2nd Respondent stated in her defence that the sewer line which is the subject of this complaint was constructed by the 2nd Respondent in 1998 with intent to serve her tenants at Nguvumali and Chumbageni apartments totaling 128 tenants at the cost of TZS 51 million. The 2nd Respondent stated further that they have been servicing the sewer line at their cost using private technicians for many years until the issue raised audit query from the National Audit Office. The 2nd Respondent explains that due to the increase in connected residents some of whom are not her tenants; the sewer line has been overloaded thus causing frequent blockages.

The 2nd Respondent further explained that there have been efforts to resolve the issue through meetings and at some point in time the 1st Respondent submitted a bill of quantities (BOQ) for rehabilitation or otherwise upgrading of the sewer line in question for consideration. The 2nd respondent claimed that the said BOQ with estimates of about TZS 460 million was too high for their Regional Office to bear and there has been no decision from the Head Quarters on how to proceed with the matter. The 2nd Respondent concluded her defence by stating that they are of the view that the 1st Respondent should take over the operation and maintenance of the sewer line as is the one with legal obligation to provide such services and has the necessary technical know-how to execute the function.

Mediation meetings involving all parties were held on 1st and 2nd October, 2020 at Mkonge Hotel in Tanga City but no settlement was reached hence the matter was referred to the Division of the Authority for hearing.

2.0 Hearing Stage:

During hearing which took place between 9th and 13th November, 2020 all parties appeared. The Complainant Mr. Shaban Gugu appeared in person whereas the 1st Respondent was represented by Eng. Rashid Shaban the Technical Manager and the 2nd Respondent was represented by Ms. Elizabeth Maro the Regional Estate Manager. The following issues were framed for determination:

2.1 whether the 1st and 2nd Respondents are jointly or severally responsible for the management of the sewage infrastructure which serves the Complainants; and

2.2 what remedies, if any, are the parties entitled to?

During hearing the Complainant Mr. Shaban Gugu testified as the only witness ("CW"); whereas the 1st Respondent called Abdul Ramadhan Mohamed the Respondent's Technical Manager who testified as R1W, and the 2nd Respondent called one Elizabeth Maro the Regional Estate Manager who testified as R2W. The Complainant's side tendered documentary evidence such as a letter from the 2nd Respondent dated 13th November, 2008 which was admitted and marked exhibit **"C1"**, a letter from the 1st Respondent dated 29th June, 2018 as exhibit **"C2"**, Letter from the 2nd Respondent dated 1st November 2019 admitted as exhibit **"C3"** and a reply thereto from the Complainant dated 7th November 2019 is admitted as exhibit **"C4"**. The Complainant also tendered a letter from the 2nd Respondent dated 11th November, 2019 as exhibit **"C5"** and a reply thereto dated 22nd November, 2019 admitted and marked exhibit **"C6"**.

The 1st Respondent tendered her Client Service Charter which was admitted as exhibit **"D1"**, a letter from the 1st Respondent to 2nd Respondent dated 11th August 2020 is admitted as exhibit **"D2"** as well as the cost estimates for rehabilitation of the sewer line in issue admitted as exhibit **"D3"**.

The 2nd Respondent on the hand tendered documentary evidence such as a letter from the 1st Respondent to the 2nd Respondent dated 27th February, 1998 and a reply thereto from the 2nd Respondent dated 22nd March, 1998 both were admitted and marked **"R1"** collectively, a letter dated 13th October 1998 from the first to the second Respondent admitted and marked exhibit **"R2"** and a reply thereto from the 2nd Respondent dated 29th October 1998 as exhibit **"R3"**.

At the end of the hearing the parties were afforded an opportunity to file final written submissions which they did and we are grateful.

3.0 The Decision:

In arriving at our decision, we have considered the applicable laws which include the EWURA Act, Cap. 414, the DAWASA Act, Cap. 273 now repealed and replaced by the Water Supply and Sanitation Act, 2019, the Water and Sewerage Connections Guidelines for Regulated Water Utilities, June, 2018, and the EWURA (Consumer Complaints Handling Procedure) Rules, GN. No. 428/2020. We have also considered the oral testimonies of the witnesses, the documentary evidence tendered during the proceedings as well as the final written submissions. Our decision on the issues raised is as follows:

3.1 *whether the 1st and 2nd Respondents are jointly or severally responsible for the management of the sewage infrastructure which serves the Complainants;*

We first wish to point out that the parties are not at issue with the facts that, the sewer line in question was constructed in 1998 and is owned by the 2nd Respondent. Parties also acknowledge that the Complainant and his fellows were introduced to the 1st Respondent by letter by the 1st Respondent and that they all pay their monthly sewer charges to the 1st Respondent.

The Complainant and his fellow residents of the former TPA owned staff houses at Chumbageni Area in Tanga City are caught in crossfire of the battle between the 1st and 2nd Respondent. In his testimony, and submissions the Complainant "CW" stated that in 2008 having acquired the houses which were previously owned by the Tanzania Ports Authority the Complainant and six of his fellow residents applied for connection to the sewer line which passes close to their residence. The applications were sent to the 2nd Respondent who constructed and owns the line. CW said the applications were accepted and were directed to pay fee of TZS 250,000.00 where TZS 150,000 went to the 2nd

Respondent and TZS 100,000 went to the 1st Respondent as technical and material cost for the connection. CW continued to state that they were issued letters of acceptance which were copied to the 1st Respondent and therefore served as an introduction letter thus securing the connection by the 1st Respondent's staff. CW tendered a letter dated 13th November, 2008 exhibit **C1**. The witness CW continued to state that he and his fellow residents were paying their monthly sewer bills to the 1st Respondent and were getting assistance in dealing with emergencies such as blockages in the sewer line until recent years when the 1st Respondent became reluctant. Following problems in the sewer line CW said they were issued a letter exhibit **C3** by the 2nd Respondent requiring them all to withdraw from the service on the ground that the same was over loaded and was becoming too costly for the 2nd Respondent to maintain. The CW stated that they refused to withdraw and denied the fact that they were the cause of the problems in the sewer line, thus, the standoff between the Complainants and the Respondents continued until the filing of this complaint.

The 1st Respondent's testimony was by the Technical Manager who relying on paragraph 6.23 of the 1st Respondent's Client Service Charter exhibit **D1**, stated that *a customer does the clearing of blockage in the customer service line.* Therefore, R1W argued that since the sewer line in issue was constructed by the 2nd Respondent, she is therefore responsible to clear the slugs. R1W continued to state that based on the charter, they have had a long discussion with the 2nd Respondent and the complainants and have advised the 2nd Respondent to take responsibility for the maintenance of the sewer line. R1W said at one point they conducted an assessment of the cost for rehabilitation of the sewer line and issued a report and bills of quantities (BoQ) to the 2nd Respondent but has not responded. Some of the communications are such as exhibit **D2** a letter dated 11th August, 2020 and the BOQ dated 30th September, 2020 exhibit **D3**. R1W insisted in his testimony that the 1st Respondent will not

take over the management of the sewer line in issue unless the same is rehabilitated and upgraded as advised in the report accompanying the BOQ.

On the other hand, the 2nd Respondent's representative Elizabeth Maro testified to the effect that the sewer line in issue was constructed in 1998 as a private sewer line to solve a sewer challenge to its own tenants. R2W stated further that before the construction, they consulted the first Respondent and she tendered letter dated 22nd March 1998 from the NHC to the Sewerage and Water Regional Engineer exhibit **R1**. R2W continued to state that between 1998 and 2008 they received connection application from some people neighboring the line some of whom including the Complainants were allowed to connect. R2W said twenty years down the line a contention was rising between them and the 1st respondent regarding the management of the sewer line, and that at some point, the 1st Respondent inquired about the standards of the line.

R2W said that currently they neither have the capacity to continue servicing the line nor do they have the funds to upgrade it. R2W said the line was a private and upgrading it to public sewer is not the 2nd Respondent's duty. It is clear that it is the first Respondent's duty to provide sewerage service to the public and therefore should take over the responsibility. I therefore pray that all people who are connected to withdraw from the system so that we remain with our tenants only.

Regarding first Respondent proposal on rehabilitating the line, R2W said they have no commitment to allocate funds for upgrading the sewer line, as it is not part of their purpose. Although they had written to their headquarters and while waiting for their response, they cannot afford upgrading the line for public use. The solution alternatively would be for the Complainant and any others customers to withdraw from the line.

We have scrutinized the testimony by all witnesses with regard to this issue and our reasoned decision is as stated below. The responsibility to construct, maintain and or operate a sewer line generally is determined by law. This issue therefore is not one of fact or evidence but one which can only be resolved by the law itself. Our first consideration was therefore the legal position with regard to who bears the legal responsibility as complained off in this complaint.

In line with the above quest we first considered the provisions of Section 20(a) of the Water Supply and Sanitation Act, Cap.272 of 2019 which provides as quoted below;

> 20. The functions of a water supply and sanitation authority shall be to-
> *(a) provide water supply and sanitation services for uses as are required by this Act or any other written law dealing with the management of water resources, water quality standards and the environment;*
>
> *(b).....N/A*
>
> *(c) develop and maintain waterworks, and sanitation works;*

From the provision of the Act above it is therefore the primary function of the Water Supply and Sanitation Authority such as the 1st Respondent to provide sanitation services and develop sanitation works. Further to that, the 1st respondent has legal obligation to develop and maintain sanitation works as provided for under the law.

Meanwhile we asked ourselves what then could have prompted this dispute in the presence of such clear provisions of the law? The 1st Respondent's defence or argument is that the sewer line in question is a private one and as such it

should be maintained by the owner the 2nd Respondent. It became our interest to determine what makes a sewer line private and whether it can be converted into a public sewer line. In that regard we considered the facts as adduced in the evidence by both witnesses of the Respondents which says the sewer line in issue was constructed as a private one. Unfortunately there is no definition of what constitutes private or public sewer line in the *Guidelines for Water and Sewerage Connections for Regulated Utilities of 2018*. The words private and public have never been used at all in the said Guidelines. However, the Act defines private sewer and private sewer installations as herein below;

"private sewer" includes a privately constructed pipe, conduit, underground gutter or channel, other than a building sewer, which may be connected to a private sewerage installation-

a) *for the conveyance of sewage or trade waste; or*
b) *(b) for other private purposes and not being part of a public sewerage system vested in or constructed by a water authority;*

"private sewerage installation" includes privately constructed latrine, septic tank or other sewerage system and all fittings connected thereto but does not include a building sewer;

From the definition of the Act it is clear that for a line to be a private sewer line it must first be privately constructed, second, be connected to a private sewer installation and must not be part of the public sewerage system operated by a water utility. The private sewerage installation as defined in the Act simply means a private disposal mechanism of sewerage which therefore includes latrines, septic tanks or other system but not a building sewer.

The sewer line in issue was constructed by a company though a public corporate but for purposes of this issue is a private person. The said sewer line is however connected to the public sewer and not a private sewer

installation. Unfortunately a public sewer has not been defined in the Act but suffice it to say a sewer line constructed by or vested in the Regulated Water Utility (RWU) qualifies to be called a public sewer. It is therefore our view that the sewer line in issue though constructed by a private entity (not a RWU) fails the test of a private sewer as it connects to the public sewer. For a sewer to be a private sewer it must prove to have its own disposal installation which in this case is lacking. It was therefore wrong in this case to consider the sewer line in issue as a private sewer line.

R2W testified that they had asked the 1st Respondent on several occasions to take over and manage the sewer line but the 1st Respondent declined on the ground that the said sewer line should first be rehabilitated at a cost estimated to TZS 460 million before the 1st Respondent can consider taking it over. In their testimony the witness for the 1st Respondent corroborated or in other words admitted and insisted so. We must say with great disappointment that the 1st Respondent's approach was and is very wrong, un-business like and unprofessional to say the least. We have considered the historical background which shows how the 1st Respondent was involved from the start of the project. Exhibit R3 a letter from the 2nd to the 1st Respondent dated 29th October 1998, states clearly in the last three paragraphs and we wish to quote;

"Mwisho napenda nikufahamishe kwamba gharama zote ambazo shirika limeingia katika kujenga huo mtaro hadi kwenye manhole ya sewer ilikuwa kuondoa kero ya maji taka kwa wakazi wa maeneo hayo. Wala haikuwa wajibu wa shirika kujenga mtaro mrefu kiasi hicho. Ni jukumu la mamlaka yako kupitisha huduma ya sewer katika maeneo hayo. Kuitaka ofisi yangu ikulipe bili za maji taka kwenye majengo haya ni kama kuikomoa ili isirudie kufanya kazi kama hiyo pale ambapo mamlaka yako haijawa tayari".

"Ninaamini unaelewa wazi kwamba ujenzi wa mtaro huu ni kitega uchumi cha mamlaka yako na si cha shirika. Ni vema suala hili ukalitolea maamuzi kwa kuzingatia hilo. Shirika halipati faida kutokana na kodi unazokusanya kutoka kwenye majengo haya".

What the 2nd respondent was saying in the quoted letter is exactly the legal position as shown by the provisions quoted earlier. It is with great dismay to we express our disappointment at the level of abdication of duties demonstrated by the 1st Respondent. Where on earth one would offer you a multi-million investment for free and yet you refuse it and put conditions for its acceptance! This is a readymade project which the 1st Respondent has been collecting revenue for over 20 years without investing a single cent and yet they refuse to accept it as their own asset when it is being offered for free. It is clear from the letter above that this was meant to be a public sewer only that the 1st Respondent was not financially well positioned to undertake a project which costed TZS 51 million in 1998. The 2nd Respondent undertook the construction of the sewer line not as a matter of their obligation but as a desperate move to serve her tenants and few members of the public such as the Complainants. This is the spirit of Public Private Partnership which if well utilized the entire Tanga City would by now be served with a network of public sewerage system.

To hammer our point home we last but not least reverted to the Guidelines cited earlier under paragraphs **14** and **15 (iv)** which is quoted below:

> *14(i) the customer ownership of the connection shall be from the lateral sewer chamber/control chamber upstream;*
> *(ii) the repair and maintenance of a customer connection from the lateral chamber/control chamber upstream shall be the responsibility of the customer....."*

15(iv) RWU are required to routinely budget for lateral extensions so that customers connections do not exceed 30 meters thus resulting in lower connection charges.

Note that RWU means Regulated Water Utility. In this scenario the 1st Respondent who is an RWU has been collecting revenue from the impugned sewerage infrastructure for over twenty years. During this entire period the 1st Respondent has never altered her business plan to budget even for repairs only let alone investing into a new infrastructure if the current infrastructure is below standard as the 1st Respondent claims. The guidelines cited above require that a connection point should not exceed 30 meters. The line in issue shows that the sewer line runs from the 2nd Respondent's apartments where 128 residents are connected from two buildings and through Chumbageni Street where several customers such as the complainants are connected. Our point is that the said line which is 1.2 kilometer long cannot be called a customer connection. This is because upon physical verification we observed that customer connections are well within 30 meters of the guidelines from the customer houses to the sewer line in question. Further to that the customer responsibility ends at connection point upstream whereas the downstream is under the Water Utility. The fact that both the upstream and downstream were constructed by the 2nd Respondent does not relieve the 1st Respondent from its primary legal obligation to develop, maintain and repair the sewer line. This sewer line is therefore by all purposes and meaning a public sewer which ought to have been built, vested in or operated and maintained by the 1st Respondent.

3.2 What remedy, if any, are the parties entitled to?

The Complainant prayed for orders to compel the Respondents jointly or severally to take responsibility for managing the sewer line which serves the Complainants.

In the final verdict we hereby allow the Complaint and declare that the 1st Respondent is legally responsible for the development, maintenance, and repair of sewerage infrastructure generally and the sewer line constructed by the 2nd Respondent in particular. Further to that we wish to emphasis that the 1st Respondent is the entity legally responsible for provision of sewerage services in its area of jurisdiction. We further order that;

(a) the maintenance and repair of the sewer infrastructure in question which runs from the 2nd Respondent's apartments at Nguvumali and Chumbageni and which is 1.2 kilometer long be and is hereby vested into the 1st Respondent;

(b) the 1st Respondent should review its Business Plan for the FY 2020/21 – 2022/23 to include the cost of rehabilitating the Sewerage infrastructure in (a) above;

(c) the 1st Respondent should conduct a verification exercise to identify all connected customers along the sewerage network who are not identified in the Utility's database;

(d) for the transfer of ownership of the sewer line in (a) above, the 2nd Respondent should follow the legal procedure for transfer of assets between government entities; and

(e) each party shall bear its own costs of the complaint.

GIVEN UNDER THE SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 29th day of December, 2020.

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KAPWETE LEAH JOHN
SECRETARY TO THE BOARD