

**THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY
(EWURA)**

COMPLAINT NUMBER GA.71/135/337

BIOSUSTAIN (T) LIMITEDCOMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 167th Ordinary Meeting held
on the 30th day of August, 2021)*

1.0 Background Information:

On 1st June, 2017, Biosustain (T) Limited a Company registered under the Companies Act and having its place of business in Singida Municipality ("the Complainant") lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The Complainant is complaining against the allegedly unjustified supplementary bill of TZS 26, 535, 568.52 issued by the Respondent.

The Complainant states that on 27th April, 2020 they received a letter from the Respondent in which the Respondent informed the Complainant that she was supposed to pay the Respondent the sum of TZS 26, 535, 568.52 as

revenue recovery following the Complainant's meter inspection conducted on the 21st February, 2020. The Complainant continues to explain that she was aggrieved and therefore wrote a letter to the Respondent on the 29th June, 2020 complaining among other things how the meter inspection exercise was conducted. The complainant further states that the inspection was not recorded or photographed which contravenes the provisions of rule 44(5) of the Electricity (System Operation Services) Rules, which states as the Complainant quotes;

a licensee shall during inspection exercise, take the readings of the meter details of the outer and inside the meter take as many photos as necessary during the exercise.

Further to what is stated above, the Complainant states that she is aggrieved with the meter inspection results above which tends to show that there was slowness in registering in kWh by -96.3% caused by voltage mismatch in all phases. The complainant says it is not possible for such a fault to go unnoticed because two weeks before the alleged inspection there was another inspection carried out by the Respondent's staff which did not disclose any anomaly of the meter.

The Complainant alleges that the whole meter inspection exercise was in violation of the law, and lacked transparency and credibility. The inspection results therefore cannot be relied upon.

The Complainant claims that following her letter to the Respondent disputing the meter inspection results and raising questions about it, the supplementary bill was reduced to TZS 19, 445,183.08 but the Complainant says they were still not convinced to pay. The Complainant therefore filed this complaint requesting for orders that the supplementary bill amounting to 19, 445,183.08 be quashed, the declaratory order that the Respondent in performing its licensed activities should adhere to the law, Guidelines and procedures which govern its operations, cost of the complaint and any other remedy the authority may deem fit to grant.

Upon receipt of the complaint, the Authority via summons issued on 11th December, 2020, ordered the Respondent 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 10/2020.

On 9th January, 2021 the Respondent filed its defence stating that the Complainant's meter inspection was a standard procedure for all on site meters connected to the Respondent's Low Voltage (L.V) or High Voltage (H.V) network. The Respondent stated further that the audit was conducted in presence of the Complainant's representatives named Ramadhan Athuman and Salim Mlaki one of whom signed the meter audit form. The Respondent added that the anomalies discovered were genuine and that since the said anomalies caused slowness in meter reading in some months, the Complainant is therefore obliged to pay for the consumed power.

Efforts to mediate the dispute did not succeed and thus, the matter was referred to the Division of the Authority for hearing.

2.0 Hearing Stage:

During hearing which took place between 6th and 12th June, 2021 both parties appeared. The Complainant was represented by Mr. Cosmas Luambano, learned Advocate whereas the Respondent was represented by Mr. Nobert Bedder the Central Zone Legal Officer. The following issues were framed for determination:

- i) whether the Respondent's inspection of the Complainant's meter complied with the legal procedures;*
- ii) whether the Respondent's claim for TZS: 19,445,183.08 from the Complainant is justified; and*

iii) what remedies if any, are the parties entitled to?

During hearing the Complainant called Dr. Riyaz Haider the Managing Director of the Complainant Company testified as the first witness of the complainant (CW1); followed by Ramadhan Athuman who testified as the second witness of the Complainant (CW2). On the other hand, the Respondent called Ms. Bupe Mwakanjala a senior accountant and meter inspector from the Respondent's headquarters office who testified as the first defence witness (RW1), and Richard Mkisi an accountant of the Respondent's Singida Regional office who testified as the second witness (RW2).

The Complainant's side tendered three exhibits, first is the supplementary bill dated 27th April 2020 which was admitted as exhibit "**C1**", the Complainant's response to the supplementary bill letter dated 29th June, 2020 was admitted as exhibit "**C2**", and Letter from the Respondent dated 6th November 2020 admitted as exhibit "**C3**".

On the other hand, the Respondent tendered five exhibits namely two Audit sheets which were admitted as exhibit "**D1**" and exhibit "**D2**" respectively, Letter to the Respondent dated 4th August 2019 which was admitted as exhibit "**D3**", power profiling and re-adjusted supplementary bill admitted as exhibit "**D4**", and the Customer consumption statement which was admitted as exhibit "**D5**".

At the end of the hearing the Complainant's counsel filed final written submissions for which 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 Electricity Act Cap. 131, the Electricity (General) Regulations GN. 945/2020, the Electricity (Supply Services) Rules GN.387/2019, Electricity (System Operations Services) Rules, 2016 and 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 Respondent's inspection of the Complainant's meter complied with the legal procedures;

The Complainant raised this issue in her complaint form claiming that the entire meter inspection exercise by the Respondent's staff was in violation of the provisions of rule 44(5) of the Electricity (System Operation Services) Rules, which states as the Complainant quotes;

a licensee shall during inspection exercise, take the readings of the meter details of the outer and inside the meter take as many photos as necessary during the exercise.

It was also the Complainant's issue during the hearing that there was no recorded evidence of the meter inspection as the law mandatorily required. During cross examination RW1 was asked whether she recorded or photographed the inspection exercise and the conversation was as quoted below:

CA: *Why do we have no photos here?*

RW1: *We did not photograph the exercise because the problem was troubleshooting. We would have taken photos if it were cuts or by-pass.*

To address this issue, we began with the legal position first as argued by the Complainant's Advocate (CA). In his final written submissions, the counsel for the Complainant cited the provisions of GN.324 of 2016 quoted above arguing that the procedure for meter inspection was not complied with.

We looked further into the cited provisions and discovered that the citation is a wrong one. Although such a provision exists, but it does not appear in the cited Rules. To be accurate the relevant Rules should have been the *Electricity (Supply Services) Rules, GN.387 of 2019*, particularly rule 48(5) which provides:

a licensee shall during inspection exercise, take the readings of the meter details of the outer and inside the meter take as many photos as necessary during the exercise.

From the section of the cross examination reproduced above it is obvious that the cited provision above was not complied with. RW1 stated the reasons for not complying with the provision to be that there was no meter tampering and that she is also guided by common practice.

We wish to make it clear that common practice or internal rules of procedure cannot be pleaded as a defence for violation of the provisions of the Act or Rules of the Authority. To cement on our position, we wish to cite the provisions of sub-rule (9) of rule 48 of GN 387 of 2019

A licensee may prepare manual or internal rules of procedure that may be used by its officials in regulating the manner in which inspection and testing of a meter shall be conducted, provided however, the said manual or rules of procedure shall be in line with the requirements of the Act and these Rules;

With the above provision, whether RW1 was guided by common practice or internal rules of procedure or manual, she was not entitled to go against the

express provisions of the Authority's Rules. Further to that the wording of the provisions of sub-rule (5) have the word *shall* which in our view implies a mandatory requirement. As correctly submitted by the Complainant's counsel that the word *shall* in this provision means the requirement is mandatory. Citing the meaning provided under section 53(2) of the Interpretation of Laws and General Clauses Act Cap. 1 R.E 2019 which says;

Where in a written law the word shall is used in conferring a function such words shall be interpreted to mean the function so conferred must be performed

Although the provisions of rule 48(1) appear to be both conferring a function of conducting meter inspection and testing as well as laying down the procedure on how the said inspection should be conducted. It is our view that the first shall conferring the function is a mandatory one in terms of section 53(2) of the Cap.1. However, whether the second shall which is used in sub-rule (5) is mandatory depends on the circumstances of each case. The question is was it mandatory in this case? To answer that we had to probe whether the problem with the meter was physical or electronic where RW1 replied it was both. The physical part of mismatch of voltage was causing the meter not to function properly internally which is electronic. It is our finding therefore that photographing the alleged mismatched voltage cables was necessary to cover the physical part of the problem. This is also because although the Complainant's representative witnessed the inspection, the Complainant later disputed the outcome and the supplementary bill resulting therefrom. Had the Complainant agreed to the inspection results and the supplementary bill then there would have been no problem as per the provisions of rule 50(1) (a) of GN..387/2019.

It is important to note as well that in this inspection at issue the The Respondent complied with certain procedures such as that provided under sub-rule (3) and (6) which require that the inspection be witnessed by the Complainant or his representative and filling and signing of the inspection

form by both the inspector and Complainant or his representative. The Respondent's first witness RW1 conducted an inspection which was witnessed by the Complainant's representative CW2 who also signed the inspection form. However, RW1 did not take photos of the inspection as required by sub-rule (5) of the cited rule 48 of GN.387 of 2019. In totality it can therefore be said that the Respondent partly complied with the procedure for meter inspection. This issue thus, can be said to have been partly answered in the affirmative.

3.2 Whether the Respondent's claim for TZS: 19,445,183.08 from the Complainant is justified;

This issue relates to the lawfulness or otherwise validity of the supplementary bill issued by the Respondent to the Complainant on 27th April, 2020 in the sum of TZS 26, 535, 568.52 which was later on reviewed and thereby reduced to TZS 19, 445,183.08 as per exhibit C3.

The general law under rule 50 of GN.387 of 2019 is that supplementary bill is issued to recover revenue unclaimed either due to error in the preparation of bills, malfunctioning of meter or tampering with infrastructure leading to under billing or loss of revenue. In this matter there is no dispute on whether the Respondent is allowed to raise a supplementary bill but whether the supplementary bill prepared and issued by the Respondent is justified.

According to the testimony by CW1 the Managing Director of the Complainant Company, they received a supplementary bill in the initial amount stated above following the meter inspection conducted by the RW1. Upon receiving the supplementary bill CW1 says he raised issues against both the credibility of the inspection and the outcomes of the inspection that is the supplementary bill. CW1 tendered a letter of complaint sent to the Respondent dated 29th June, 2020. Following this complaint, the

supplementary bill was reviewed to TZS 19, 445,183.08 as per exhibit C3 a letter from the Respondent. CW1 says they were still not convinced to pay on the ground that the inspection was not credible and therefore the outcomes were not reliable.

On the other hand, RW1 stated that she raised the supplementary bill following the meter inspection which revealing that the meter had Voltage mismatch in all phases as per exhibit D1 the meter audit form. To be precise we quote hat is written at the bottom of the said exhibit D1;

Meter found mismatched in all phases voltage and current. The problem to be rectified and revenue recovery should be calculated.

RW1 further testified that the error of voltage and current mismatch caused slow ness in recording by the meter and therefore revenue recovery measures had to be done. The witness (RW1) further said the mismatch was caused by an error in installation. During examination in-chief RW1 stated that;

RA: *What were your findings?*

RW1: *During the inspection we were surprised to see the power factor was very low. We continued to test the meter but when we wanted to get to the instant active power we found it very low compared to the load in use at that time.*

RA: *What action did you take with such findings?*

RW1: *I told the factory technicians that the meter was not working properly. We concluded that the meter had been wrongly installed. We told them we needed to correct the errors. (emphasis our)*

During examination by the Division RW1 repeated the admission that the error was the Respondent's fault.

ENG. RUGABERA: *Whose fault is it if there is cable mismatch in meter installation?*

***RW1:** The installer or supplier who is TANESCO here.*

We asked ourselves if meter malfunctioning due to installation errors entitles the Respondent (Service Provider) to raise supplementary bill for energy consumed. Regulation 8 of GN.945 of 2020 empowers the licensee (Respondent) to raise supplementary bill for meter malfunctioning not caused by the customer (Complainant). However, we considered such instances which are likely to cause meter malfunctioning apart from the customer and came up with instances such as wear and tear, lightening and thunderstorms, accidents, and operational malfunctioning. The only errors committed by the Respondent allowed as per rule 50 of GN.387 are errors in preparation of bills. This must be the spirit of the law which recognizes that the customer (Complainant) is entitled to rely on the professional expertise of the Respondent's staff in installing the Respondent's infrastructure which serves the Complainant. To hold otherwise would put the Complainant and any other customers at the mercy and abuse of the unscrupulous and negligent Respondent's staff.

RW1 testified and admitted that two weeks before her inspection there was yet another inspection whose intention and outcome was not disclosed. There were no answers as to why if the error began in October were they not noticed by the inspection conducted two weeks prior to the impugned inspection. On further note during site visit it was observed that the Complainant's meter has a cover/door which is locked and the keys are kept by the Respondent's staff. There was no evidence during the hearing that the cover to that meter was broken which makes tampering by the Complainant far-fetched. The circumstances of this case raise doubts into the Respondent's staff conduct in respect of the Complainant's meter. These doubts cast a huge cloud on the credibility of the Respondent's exercise from meter audit to the validity of the supplementary bill resulting from it.

We have examined the revenue recovery computation by the Respondent in exhibit D4 particularly on its Appendix 2. We have observed that the

Respondent considered that the period of malfunctioning was between October, 2019 and February, 2020 (Five Months inclusive). The supplementary bill therefore was prepared in respect of this period. The Respondent's approach was to take the average consumption of the three highest billed months in the year 2019 that is July, August and September, 2019 and use the average to find the difference between what was billed in the months of October, 2019 to February, 2020. The total of the difference in those months is what makes up the supplementary bill of TZS: 19,445,183.08 as per appendix 2 of exhibit D4.

With all due respect, the above Respondent's approach is wrong. The law under regulation 8(2) of GN. 945 of 2020 calls for consideration of the customer's consumption trend. In this regard the proper approach is to consider the customer's consumption for the like periods in different years. This means if the Respondent considered the period of recovery to be October 2019 to February, 2020 then the Respondent ought to have considered the Complainant's consumption trend for the like period of the previous or following one or two years. This would have done justice to the Complainant as it would have revealed any significant drop in the consumption which if not explained would mean the meter had indeed malfunctioned. In our comparison below the consumption trend appears as shown in the table below.

MONTH	BILL IN YEAR1	BILL IN YEAR2	DIFF. BTN Y1 & Y2
	2019	2020	Revenue Recovery
October	17,519,633.10	22,905,001.02	-5,385,367.92
November	19,379,029.00	24,295,181.26	-4,916,489.26
December	28,223,872.84	24,297,570.02	3,926,302.84
	Bill in 2020	Bill in Yr 2021	Diff. BTN Y1 & Y2
January	22,545,470.68	23,368,742.54	-823,271.86
February	15,690,449.28	23,033,808.62	-7,343,359.34

Comparing the recovery period with a similar period in 2020 and 2021 as per the table above one would notice that there was a drop in the Complainant's consumption bill in October and November at the amount of 5.3 and 4.9 million respectively. Could this drop be attributed to meter malfunctioning? The explanation is found in exhibit **D3** tendered by the Respondent herself, which is the Complainant's letter to the Respondent stating that the factory stopped working on 15th October, 2019 to 12th November, 2019 due to *Press break down* and again on 21st to 23rd November, 2019 due to *transformer cable break down*. This explanation is further corroborated by Exhibit **D4** also tendered by the Respondent showing power profile for the month of October, and November, 2019 in sheet 1 and sheet 2 respectively. Sheet one of exhibit D4 shows that there was no consumption of kWh from 17th October, 2019 to 31st October, 2019 which means the Complainant's factory operated for like half a month only in October, 2019 hence the decrease in consumption bill by 5.3 million compared to a similar period in 2020. Under sheet 2 of exhibit D4 power profile for the month of November, 2019, the Complainant's factory operated for 14 days which is almost half the month hence the decrease by 4.9 million in her November, 2019 bill when compared to a similar period in 2020. The decrease in consumption therefore for the month of October and November despite being insignificant cannot be attributed to meter malfunctioning but to technical breakdown which stopped the factory from functioning for many days.

Further we compared the consumption bill for the month of December, 2019 and 2020 where the Complainant was operating normally and realized that the consumption bill in December, 2019 was in-fact higher than that of December, 2020 by 3.9 million. This contradicts the existence or possible existence of meter malfunctioning to justify the Respondent's supplementary bill. The difference noted for the month of January was so insignificant that is not worth consideration. As for the month of February 2020 exhibit D5 did not provide billing for February, 2021 consumption. However, according to the Customer Consumption Trend Report submitted

upon request by the Division, the Complainant's consumption for February, 2021 was higher than that of 2020 by 7.3 million. However, given the trend as it appears, February is the beginning of off-season period and therefore the decrease in consumption for February, 2020 is justified.

Before we reiterate our final holding on this issue we find it compelling to elaborate on the meter inspection finding by the Respondent's staff. RW1 who conducted the inspection stated that the voltage mismatch caused *slowness in meter registration in kWh by -96.3%*. Neither of the Respondent's witnesses could explain what that meant. Thus, it left several questions unanswered such as what does meter registration refer to? Does slowness in registration mean under registration or even non-registration at all? How is meter registration related to revenue loss? Be it as it may our view on the word slow or slowness in registration is that the same cannot be equated with non-registration or under registration. The fact that the meter was slow in registering the kWh consumed if that is what it was referring to, does not necessarily mean the meter did not fully register the same. *A slow runner nevertheless completes the race.* It would therefore be concluded that however slow the meter might have been in registering the amount of electricity consumed, it nevertheless completed the registration and therefore no amount of electricity consumed went un registered. Based on the foregoing we therefore conclude this issue in the negative by holding that the Respondent was not justified in issuing a supplementary bill in this case. In that regard the claimed amount of TZS: 19,445,183.08 or any other amount is not justified.

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

The Complainant prayed for orders to compel the Respondent to that the supplementary bill amounting to 19, 445,183.08 be quashed, the declaratory order that the Respondent in performing its licensed activities should adhere to the law, Guidelines and procedures which govern its operations, cost of

the complaint and any other remedy the authority may deem fit to grant. The Respondent on the other hand prayed that the Complaint be dismissed and the Complainant be ordered to pay the supplementary bill.

We hereby reiterate our findings on the first issue that the meter inspection conducted by the Respondent did not fully comply with the laid down legal procedures. On the second issue we hold that the supplementary bill issued by the Respondent is not justified. There is no evidence on the balance of probability to support the fact that the installation error if any occasioned loss of revenue on the Respondent's part.

In the final verdict we hereby allow the Complaint and order that the Respondent's supplementary bill be and is hereby quashed. Further to that, the Respondent is ordered to fully comply with the legal procedures in conducting licensed activities particularly meter audit/inspection. Last but not least the Respondent is ordered to pay costs of the Complainant in pursuing this complaint.

GIVEN UNDER THE SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 30th day of August, 2021.



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KAPWETE LEAH JOHN
SECRETARY TO THE BOARD