

MAMLAKA YA UDHIBITI WA HUDUMA ZA NISHATI NA MAJI

(EWURA)

MALALAMIKO NA: GA.71/135/283

FELIX WILLY MTULIYA NA ANNA DANIEL FELIX WALALAMIKAJI

DHIDI YA

SHIRIKA LA UGAVI WA UMEME NCHINI (TANESCO)..... MLALAMIKIWA

TUZO

***(Imetolewa na Bodi ya Wakurugenzi ya EWURA kwenye kikao chake cha 166
kilichofanyika tarehe 29 Julai, 2021)***

1.0 Maelezo ya Awali:

Mnamo tarehe 19 Novemba, 2020, Mamlaka ya Udhibiti wa Huduma za Nishati na Maji "EWURA" ("Mamlaka") ilipokea malalamiko kutoka kwa Felix Willy Mtuliya na Anna Daniel Felix wa Mtaa wa Anglikana "A" Soko Matola Manispaa ya Sumbawanga, Mkoa wa Rukwa ("Walalamikaji") dhidi ya Shirika la Ugavi wa Umeme nchini (TANESCO) (Mlalamikiwa), wakidai fidia ya Shilingi 1,223,000/= kutokana na hasara waliyopata kwa kuharibikiwa na vifaa vya matumizi ya umeme kulikosababishwa na hitilafu ya umeme katika miundombinu ya Mlalamikiwa.

Walalamikaji wanaeleza kuwa Mnamo siku ya tukio kulitokea hitilafu kwenye transfoma ya Mlalamikiwa inayowahudumia na kupelekea vifaa kadhaa vya matumizi ya ndani kuharibika.

Walalamikaji wanaeleza kwamba ilikuwa siku ya jumapili tarehe 27 Septemba, 2020 kulikuwa na hitilafu katika transfoma inayowahudumia na kutokana na hitilafu hiyo vifaa vyao kadhaa vinavyotumia umeme viliathirika. Walalamikaji wanaendelea kueleza kwamba transfoma hiyo imekuwa na matatizo muda mrefu na hata tarehe 10 Desemba, 2020 ilikuwa na hitilafu wakatoa taarifa na kupewa TB no. 2511. Walalamikaji anaeleza Zaidi kuwa vifaa vya nyumbani kwao vilivyoathiriwa na hitilafu ya umeme ni kama ifuatavyo;

- a) televisheni 3 zenye jumla ya thamani ya shilingi 450,000/=
- b) taa 3 zenye jumla ya thamani ya shilingi 23,000/=
- c) redio 3 zenye jumla ya thamani ya shilingi 450,000/=
- d) DVD players 2 zenye jumla ya thamani ya shilingi 300,000/=

Walalamikaji wanasema majira ya jioni ya siku hiyo ya tukio maafisa wa Mlalamikiwa walifika na kushughulikia hitilafu katika transfoma na kurejesha umeme lakini vifaa vyao havikufanya kazi tena. Walalamikaji wanadai kuwa waliandika barua ya madai kwa Mlalamikiwa lakini madai yao yalikataliwa. Walalamikaji hawakuridhishwa na majibu ya Mlalamikiwa na hivyo walifungua malalamiko Mamlaka wakiomba Mamlaka imuamuru Mlalamikiwa kuwalipa fidia ya shilingi 1,223,000/= kwa hasara waliyopata.

Baada ya kupokea malalamiko haya tarehe 16 Desemba, 2020 Mamlaka ilimwandikia Mlalamikiwa kumtaka awasilishe utetezi wake kwa maandishi kama inavyoelekezwa na kanuni ya 6(1) ya Kanuni za Mamlaka za Utatuzi wa Migogoro TS na. 428/2020 yani "Rule 6 (1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, GN No. 428/2020".

Mnamo tarehe 14th Januari, 2021 Mlalamikiwa aliwasilisha utetezi wake na kukiri kwamba ni kweli kulikuwa na hitilafu kwenye mifumo yake ya usambazaji umeme lakini alikana madai mengine yote ya Walalamikaji.

Juhudi za kutatua mgogoro huu kwa njia ya usuluhishi zilifanyika mnamo tarehe 19 Februari, 2021 lani hazikuzaa matunda hivyo mgogoro ulipelekwa hatua ya usikilizwaji.

2.0 Usikilizwaji:

Katika usikilizwaji wa malalamiko haya ambao ulifanyika kati ya tarehe 20 na 21 Mei, 2021 Mmoja wa Walalamikaji ambao ni wanandoa kwa jina la Anna Felix Mtuliya alifika mbele ya Divisheni. Upande wa Mlalamikiwa uliwakilishwa na Bw. Florence Kahatano Afisa Sheria Mkuu wa Mlalamikiwa wa Kanda ya Nyanda za Juu Kusini. Hoja zifuatazo ziliainishwa kwa ufumbuzi:

2.1 *Je Mlalamikiwa anapaswa kulaumiwa kutokana na hitilafu iliyopelekea kuharibika kwa vifaa vya Walalamikaji?*

2.2 *Kama jibu katika hoja ya kwanza ni ndio, Je, Mlalamikiwa anawajibika kwa hasara aliyoipata Walalamikaji?*

2.3 *Je madai ya Walalamikaji ni halali? na*

2.4 *Je nafuu gani za kisheria wadaawa wanaweza kupata kama zipo?*

Katika usikilizwaji, Mlalamikaji mmoja alisimama kama shahidi pekee wa upande wa Walalamikaji (CW) na hakutoa Ushahidi wa nyaraka au vitu.

Upande wa Mlalamikiwa uliita mashahidi watatu Bw. Samuel Shimo (RW1), fundi umeme, Joel Enos Mwakasole (RW2), fundi umeme na Charles Faustine (RW3), Mhandisi Usalama wa Ofisi ya Mlalamikiwa ya Mkoa wa Rukwa.

3.0 Uamuzi:

Katika kufikia uamuzi wetu tumeingatia sheria husika ambazo ni Sheria ya EWURA sura 414, (The EWURA Act, Cap. 414), Sheria ya Umeme sura ya 131, (Electricity Act, Cap. 131) pamoja na Kanuni za Umeme Ts.Na.63 la 2011, (the Electricity (General) Regulations GN. 63/2011), na Kanuni za EWURA za Taratibu za Utatuzi wa Migogoro TS. 428 la 2020. Tumezingatia pia ushahidi uliotolewa na mashahidi wa pande zote mbili, pamoja na vielelezo vilivyotolewa. Uamuzi wetu katika hoja zilizoainishwa ni kama ifuatavyo:

3.1 *Je Mlalamikiwa anapaswa kulaumiwa kutokana na hitilafu iliyopelekea kuharibika kwa vifaa vya Walalamikaji?*

Katika kufikia uamuzi juu ya hoja hii tumezingatia sheria, Ushahidi, wa mashahidi wa pande zote pamoja na vielelezo vilivyopokelewa.

Katika Ushahidi wake, Shahidi pekee wa Walalamikaji (CW) alieleza kwamba siku ya tukio alikuwa dukani kwake duka mbalo lipo nyumbani kwake. Ushahidi wake ulikuwa mfupi tu akieleza kuwa mnamo tarehe 27 Septemba, 2020 majira ya mchana alisikia kishindo kikubwa kwenye transfoma ya Mlalamikiwa iliyopo mtaani kwake na kelele wa watu wakisema moto. CW alidai kuwa baaada ya kuskia kishindo na kelele zile alimpigia simu Mlalamikiwa na kumjulisha kkuwa kulikuwa na tatizo kwenye transfoma. CW aliendelea kueleza kuwa alishuhudia taa za nyumbani za umeme zikilipuka kwakuwa wakati ule zilikuwa zinawaka na baadae alibaini kuwa vifaa vingine kama vile televisheni, redio na spika "subwoofer" vilikuwa vimeathirika na hitilafu hiyo ya umeme. CW pia alisema maafisa wa Mlalamikiwa walitembelea nyumbani kwake siku iliyofuata na kuwaelekeza kuwasilisha madai yao kwa maandishi. CW alieleza daidi kuwa watu wengi walipata hasara ya kuharibikiwa vifaa vyao lakini si wote walidai fidia. CW alidai hata wachache waliowasilisha madai yao ya fidia yalikataliwa. CW alisistiza kuwa tatizo lilikuwa katika transfoma ya Mlalamikiwa na kwamba Mlalamikiwa anatumia kigezo cha masharti ya Mkataba kama kisingizio cha

kukwepa uwajibikaji. CW alieleza katika ushahidi wake kuwa hakuridhishwa na majibu ya Mlalamikiwa na hivyo akafungua malalamiko haya Mamlaka ili kudai fidia. Shahidi huyo alihitimisha kwa kuiomba Mamlaka imuamuru Mlalamikiwa awalipe fidia ya shilingi 1,223,000/= kwa hasara aliyowasababishia.

Mlalamikiwa alikuwa na utetezi mfupi tu ambao ulihusisha mashahidi watatu (RW1, RW2 na RW3). Katika Ushahidi wao Mashahidi hao walikiri kuwa ni kweli kulikuwa na hitilafu katika transfoma ya Mlalamikiwa inayowahudumia Walalamikaji. Mashahidi hao walisema kuwa hitilafu hiyo ilipelekea ongezeko la kiwango cha umeme kilichowafikia wateja wao hadi kufikia kiasi cha Voti 351 kiwango ambacho ni Zaidi ya kile cha kawaida cha 230 + au - 6%. Mlalamikiwa hakupinga kimsingi kwamba Walalamikaji pamoja na wateja wengine walipata hasara ya kuharibikiwa na vitu vya nyumbani vinavyotumia umeme. Shahidi na.3 alikiri kuwatembelea baadhi ya wateja wakiwemo Walalamikaji na kujionea mwenyewe vifaa vinavyodaiwa kuharibika kutokana na hitilafu hiyo ya umeme. Hata hivyo Mlalamikiwa alikana kuwajibika na hasara iliyojitokeza kwa madai kuwa Mlalamikiwa hakuwa chanzo cha hitilafu iliyotokea na kwamba Walalamikaji hawakutimiza au kuzingatia masharti ya Mkataba wa huduma ya umeme ambayo yanamtaka kuweka vifaa vya ulinzi kwa vifaa vyake.

Kwa kuanza tumezingatia sheria husika katika kutanzua hoja hii hususani kanuni ya 20 ya Kanuni za Umeme TS Na. 63/2011 yani "regulations 20 of the Electricity (General) Regulations GN. 63/2011" ambayo imenukuriwa hapa chini:

20(1) the licensee shall in conducting its licensed activities of generation, transmission, supply and installation, ensure compliance with industry's standards and best practice to guarantee protection of the public from danger"
(2) the danger referred to under this regulation includes dangers to persons, property and the environment"

Tafsiri yake ni kwamba, katika kutekeleza majukumu yake ya kuzalisha, kusafirisha, na kusambaza huduma ya umeme, mtoa huduma atawajibika kuzingatia viwango vya tasnia na mazoea yaliyokubalika katika tasnia ya umeme ili kuhakikisha usalama kwa umma dhidi ya hatari zozote. Hatari zinazozungumziwa katika kanuni ndogo ya kwanza ni pamoja na hatari kwa binadamu, mali na mazingira.

Kwa upande mwingine kifungu cha 26 (5) (c) cha Sheria ya Umeme Sura 131 yani Section 26(5) (c) of the Electricity Act, Cap.131” ambacho pia kimenukuriwa hapa chini;

26(5): Subject to rules made by the Authority, the licensee shall be liable to compensate a customer who suffers loss of property or physical injury as a result of an act of the licensee (i.e. the Respondent) which amounts to;

- (a)n/a
- (b)n/a
- (c) *poor quality of supply.*

Tasfiri yake ni kwamba, Kwa kuzingatia kanuni zilizotungwa na Mamlaka (EWURA), mtoa huduma atawajibika kumlipa fidia mteja atakayepata hasara ya mali au majeruhi kutokana na kitendo cha mtoa huduma ambacho kitatafsiriwa kuwa utoaji wa huduma ya kiwango duni.

Ni mtazamo wetu kuwa, kwa mujibu wa sheria tajwa hapo juu, Mlalamikiwa ana wajibu wa kisheria wa kuzingatia viwango na mazoea yaliyokubalika katika utoaji wa huduma ya umeme kwa lengo la kuepusha madhara au hatari kwa binadamu, mali na mazingira. Kwa maneno mengine, Mlalamikiwa alikuwa na wajibu wa kisheria kuzingatia viwango vya utoaji huduma ya umeme na mazoea yaliyokubalika katika tasnia ya umeme katika kutoa huduma ya umeme kwa wateja wake wakiwemo Walalamikaji. Zaidi ya hapo Mlalamikiwa anawajibika kumfidia mteja pale inapothibitika kuwa amepata hasara kutokana na huduma ya umeme isiyokidhi viwango.

Ifahamike pia kwamba huduma duni ya umeme ina uhusiano wa moja kwa moja na kutozingatia viwango vya huduma ya umeme na mazoea yaliyokubalia katika tasnia hiyo jambo ambalo ni takwa la kisheria. Hivyo kutozingatia viwango na mazoea yaliyokubalika katika utoaji wa huduma ya umeme ni kukiuka sheria.

Jambo jingine lilikuwa ni kuangalia kama Mlalamikiwa anaweza kuepuka wajibu wake wa kisheria kwa hoja kwamba hakusababisha hitilafu husika ama kwamba Walalamikaji hawakutumia kifaa maalum kulinda vifaa vyao kama Mkataba wa huduma unavyotaka. Katika kujibu hoja hii ndogo tuligeukia Ushahidi wa Mlalamikiwa mwenyewe. Katika Ushahidi wake, shahidi na.2 (RW2) ambaye alitembelea eneo la tukio alikuwa na haya ya kusema;

RA: *Ulikuwa na uhusika gani kwenye shauri hili lililopo mbele ya Divisheni?*

RW2: *Mwaka Jana 2020 tsrehe 28 Septemba, nilielekezwa na mkuu wangu kushughulikia hitilafu kwenye transfoma iliyopo eneo la Jangwani ambayo pia inafahamika kama transfoma ya Ngurumo. Tulienda pale na kukagua transfoma kisha tulibaini kuwa waya unaotenganisha "Neutral" na raba ya transfoma ulikuwa umeyeyuka na hivyo kusababisha ongezeko la kiwango cha umeme unaokwenda kwa wateja. Baada ya kubadilisha waya huo tuliwasha transform na kuichaji kwa dakika chache kisha tulipima kiwango cha umeme na kuona kipo sawa tukarejesha huduma kwa wateja.*

RA: *Nini kilikuwa kisababishi cha ongezeko la umeme?*

RW2: *Hatukubaini moja kwa moja nini kilisababisha lakini tunahisi ilikuwa hitilafu ya mkondo mfupi (short circuit) katika njia ya umeme.*

RA: *Nini kinaweza kusababisha hitilafu ya mkondo mfupi (short circuit)?*

RW2: *hitilafu ya mkondo mfupi inaweza kusababishwa na shughuli za binadamu au majanga ya asili kama vile upepo au radi.*

Kwa mtazamo wetu jibu la swali la kwanza lilitosha kwa kuwa lilieleza tatizo na kisababishi cha tatizo. Shahidi alieleza kuwa *tulipofika tulikagua transfoma kisha tulibaini kuwa waya unaotenganisha "Neutral" na raba ya transfoma ulikuwa umeyeyuka na hivyo kusababisha ongezeko la kiwango cha umeme unaokwenda kwa wateja*. Hivyo basi, tatizo lilikuwa ni kiwango kikubwa cha umeme ambacho kilisababishwa na kuyeyuka kwa waya unaotenganisha waya wa "neutral" na raba ya transform. Maelezo mengine aliyoyatoa shahidi namba 2 hayakuwa ya lazima na hayana umuhimu badala yake yanalenga kujaribu kurefusha bila umuhimu mlolongo wa visababishi. Itoshe tu kusema kuwa uharibifu wa mali za Walalamikaji ulisababishwa na kiwango kikubwa cha umeme kilichosababishwa na kuyeyuka kwa waya tenganishi kwenye transfoma. Madai ya Walalamikaji yanahusu kuharibikiwa vifaa vyao vya matumizi ya nyumbani kutokana na umeme mkubwa uliosababishwa na hitilafu (kuyeyuka kwa waya tenganishi *cable lug*) kwenye transfoma ya Mlalamikiwa. Hoja ya Mlalamikiwa kudai kwamba kuyeyuka kwa waya tenganishi (*cable lug*) kulisababishwa na mkondo mfupi (*short circuit*) ambao pia ulisababishwa na ama shughuli za kibinadamu au majanga ya asili kama upepo na radi haina mashiko. Hii ni kutokana na kwamba Mlalamikiwa hajathibitisha uwepo wa huo mkondo mfupi (*short circuit*) wala uwepo wa shughuli za kibinadamu au majanga yoyote ya kiasili. Kwa jicho la ndani Zaidi tunaweza kusema kuwa kuyeyuka kwa waya tenganishi kunaweza kuwa kumesababishwa na uchakavu. Kama hivyo ndivyo basi lawama bado inamwangukia Mlalamikiwa kwa kushindwa kwake kubaini uchakavu huo kupitia kaguzi za mara kwa mara anazopaswa kufanya kwenye miundombinu yake. Kwa hali yoyote bado ni jukumu la Mlalamikiwa kubaini na kushughulikia dosari au hitilafu zozote kabla hazijaleta madhara au hasara kwa wateja wake. Sio lazima Mlalamikiwa afanye kitendo fulani ambacho kitasababisha hitilafu hiyo bali kutokutimiza wajibu wake (kutokutenda) inatosha kumfanya Mlalamikiwa kuwajibika na hitilafu husika pamoja na hasara itakayotokana nayo.

Msingi wa hoja ya pili ya utetezi wa Mlalamikiwa ni kwamba hawajibiki na hasara waliyopata Walalamikaji kwa kuwa hawakuzingatia masharti ya

Mkataba wa huduma ya umeme yanayomtaka mteja kuweka vifaa vya ulinzi dhidi ya umeme mkubwa. Tumejadili hoja hii ya Mlalamikiwa kwa kina pamoja na masharti ya mkataba husika na tukawa na haya ya kusema. Kinachodaiwa kuwa ni Mkataba wa huduma ya umeme ni nyaraka ambayo ni sehemu ya fomu ya maombi ya huduma ya umeme. Nyaraka hiyo hujazwa na mteja (Walalamikaji) na husainiwa na mteja (Walalamikaji) na mtoa huduma (Mlalamikiwa). Nyaraka hiyo pia huandikwa na Mlalamikiwa ikiwa katika lugha ya kiingereza ambayo ni lugha ya kigeni ikiwa na masharti mengi yaliyoandikwa kwa maandishi madogo (fine prints). Mteja (Mlalamikiwa) hatoi maoni wala hawezi kuomba marekebisho ya masharti yaliyomo. Mwisho nyaraka hiyo huandaliwa kwa nakala moja tu ambayo hutunzwa na Mtoa huduma (Mlalamikiwa). Kwa hali ilivyo na kwa kuzingatia nyaraka hiyo ilivyo kama ilivyoielezwa hapo juu, tunaweza kusema kwa ujasiri kuwa wengi wa wateja hususani wenye haiba ya Walalamikaji hawawezi kuchukuliwa kuwa waikuwa wanaelewa wanachokitilia saina. Cha msingi kwao kwa wakati huo ilikuwa ni kupata huduma ya umeme tu.

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Bila kuathiri msimamo wetu hapo juu tumeamua pia kutumia kanuni ya kukiuka sharti la msingi *fundamental breach* ili kutanzua hoja hii. Kwa mujibu wa kanuni hii ambayo ilitokana na mamuzi ya Mahakama za nchini Uingereza, mdaawa hawezi kukwepa kuwajibika kwa kugemea masharti ya mkataba yanayomwondolea uwajibikaji, ilihali yeye mwenyewe amekiuka sharti la msingi la Mkataba. Ni wazi kwamba Walalamikaji walipooomba huduma ya umeme walieleza wazi wanahitaji umeme kwa ajili ya matumizi ya nyumbani. Hivyo basi Mlalamikiwa alifahamu Mkataba husika ni wa kutoa huduma ya umeme atakaoutumika kwa matumizi ya nyumbani. Kwa kujibu wa viwango vya ubora vya tasnia ya umeme kama vilivyoielezwa katika Viwango vya Tanzania (Tanzania Standard TZS 1373:2011) kwa ajili ya ubora wa viwango vya umeme kifungu cha 3.25; kiwango cha umeme kinachokubalika kwa umeme wa msongo mdogo (low voltage network (Single phase) ni voti 230. Kifungu cha 4.3.2 kinataja kiwango kile kile cha voti 230 pamoja na nyongeza au pungufu ya asilimia 10 ya kiwango hicho.

Viwango hivyo hivyo vimeelezwa katika kifungu cha 1.1.4 cha Mwongozo wa Kihandisi wa mwaka, 2012 wa Mlalamikiwa ambao umeidhinishwa na Mdhibiti. Jambo ambalo tunataka kusema kutokana na viwango hivi ni kwamba kiwango cha umeme unaopaswa kumfikia mteja wa matumizi ya nyumbani kama Walalamikaji ni jambo la msingi sana katika mkataba wa huduma ya umeme. Haijalishi kama viwango hivi vya ubora viliainishwa katika mkataba wa huduma ya umeme au la, suala la viwango vya ubora ni la kisheria na hivyo halilazimiki kuandikwa (implied). Suala la viwango vya ubora wa umeme unaopelekwa kwa mteja ni la msingi sana kiasi kwamba likipuuzwa mkataba wote wa huduma ya umeme unakosa maana. Hivyo ni rai yetu kwamba huduma yoyote ya umeme yenye viwango duni vya ubora tofauti na viwango vilivyoainishwa ni ukiukwaji wa sharti la msingi, na hivyo Mlalamikiwa hawezi kukwepa lawama na uwajibikaji kwa kujificha nyuma ya kivuli cha masharti yanayomwondolea uwajibikaji.

Kwa kuondoa mashaka yoyote shahidi namba 3 wa Mlalamikiwa (RW3) alikiri kuwa mfumo wa Walalamikaji haukuonekana kuwa na dosari zozote ulipokaguliwa. Shahidi huyo alidai pia kulikuwa na vifaa vya ulinzi kama vile *main switch* na *circuit breaker*. Kwa mujibu wa Mwongozo wa Kihandisi wa Mlalamikiwa tulioutaja hapo awali kifungu cha 1.3.10 nyumba ya mteja inatakiwa kuwa imefungwa vifaa vya ulinzi vinavyokidhi matakwa ya Kanuni za Taasisi ya Mifumo ya Kihandisi ya Umeme the *Institute of Electrical Engineers Wiring Regulation (The IEE Wiring Regulations)*. Kwa maana hiyo wateja hawa ambao ni Walalamikaji katika shauri hili walikidhi matakwa ya kiufundi kwa ajili ya kuunganishiwa huduma ya umeme. Tunaweza basi kusema kwa uhakika kuwa Mlalamikiwa anawajibika kwa hitilafu iliyotokea pamoja na hasara iliyosababishwa na hitilafu hiyo kwa Walalamikaji.

3.2 Ikiwa jibu la hoja ya kwanza ni ndio, Je Mlalamikiwa anawajibika kwa hasara iliyompata Walalamikaji?

Ni jambo lisilobishaniwa kuwa mali za Walalamikaji kwa maana ya vifaa vya matumizi ya umeme vya nyumbani viliharibika. Hii ni hasara ambayo imesababishwa na umeme mkubwa na usiozingatia viwango vya umeme wa

matumizi ya nyumbani. Kutokana na hoja ya kwanza kuamuliwa upande wa Walalamikaji, inafuata kwamba Mlalamikiwa anawajibika kwa hasara iliyowapata Walalamikaji. Suala dogo la kujiuliza ni kiwango gani cha fidia wanachostahili Walalamikaji.

3.3 *Je madai ya Walalamikaji ni halali?*

Baada ya kuamua katika hoja ya kwanza na ya pili kuwa Mlalamikiwa anastahiili kuwajibika kwa hitilafu iliyotokea na hasara ilipelekea, hatuna budi kuamua pia kuwa madai ya Walalamikaji ni halali.

3.4 *Nafuu gani za kisheria kama zipo kwa wadaawa?*

Walalamikaji waliomba amri ya kulipwa na Mlalamikiwa kiasi cha shilingi 1,223,000/= kama fidia kwa hasara waliyoipata ya kuharibikiwa na vifaa vyake vya mnyumbani vya matumizi ya umeme. Mlalamikiwa kwa upande mwingine aliomba malalamiko haya yatupiliwe mbali kwakuwa hayana msingi wa kisheria.

Wakati wa usikilizwaji, shahidi wa Walalamikaji alitoa Ushahidi kuwa fidia wanayoidai ni kwa ajili ya vifaa kama vile televisheni 3 DVD player 2, na taa za umeme 5. Shahidi wa tatu (RW3) wa Mlalamikiwa ambaye alitembelea nyumba ya Walalamikaji kujionea madhara ya hitilafu ya umeme alikiri katika Ushahidi wake kuwa aliona televisheni 2, na king'amuzi kimoja ambavyo vilikuwa vimeharibika. Hivyo orodha ya vifaa vinavyodaiwa kuharibika ilipingwa, na kwa kuwa Walalamikaji hawakutoa uthibitisho mwingine kuunga mkono madai yao, itakuwa ni vigumu kwetu kuamuru walipwe fidia yote kama walivyoomba. Madai yao ni ya fidia mahsusi (special damages) ambayo kwa mujibu wa sheria ya madai yanapaswa kuthibitishwa isipokuwa pale tu ambapo Mlalamikiwa ameyakubali. Kwakuwa shahidi wa tatu wa mlalamikiwa (RW3) alikiri kuona televisheni 2 zilizoharibika tunaona ni halali kwa Walalamikaji kulipwa fidia kuhusiana na televisheni hizo 2 ambazo hazibishaniwi. Mlalamikiwa anaamriwa ama kununua na kuwakabidhi Walalamikaji televisheni 2 za ukubwa na maelezo

ya kiufundi kama ilivyodaiwa na Walalamikaji au kumlipa fedha taslimu kiasi cha shilingi 300,000/= kama thamani ya televisheni hizo mbili kwa bei ya soko. Tumejizua kutoa fidia ya ving'amuzi licha ya Mlalamikiwa kukiri kuviona kwakuwa Walalamikaji hawakuvitaja katika madai yao ya msingi wala kutoa Ushahidi wake. Hatuwezi kuamuru fidia kwa vitu ambavyo havikuombwa wala kuthibitishwa. Mbali na fidia hiyo mahsusi, tumezingatia msongo wa mawazo, usumbufu na kadhia ambayo watakuwa walipata Walalamikaji, hususani katika kukabiiliana na hoja za wakili wa Mlalamikiwa aliyedai kuwa Walalamikaji ni watu ambao wanatafuta kujitajirisha isivyo halali. Shahidi (CW) alioneshwa wazi kukerwa na kauli hiyo kutoka kwa wakili wa Mlalamikiwa kama ilivyodhihiri kwenye utetezi wake mlalamikiwa wa maandishi lakini pia katika mahojiano wakati wa kutoa Ushahidi. Kwa upande wetu hatudhani hata kidogo kuwa Walalamikaji ni watu waliotaka kujipatia kitu kutoka kwa Mlalamikiwa isivyo halali. Kwa mtazamo wetu ni watu waliokuwa wakidai haki yao na nafuu ya kisheria kupitia utaratibu halali wa kisheria kufuatia hasara waliyopata kutokana na vitendo vya Mlalamikiwa. Kwa msingi huo tunaamuru Mlalamikiwa awalipe Walalamikaji kiasi cha shilingi 500,000/= kama fidia ya jumla kwa usumbufu na mambo yote waliyopitia katika kupigania haki yao. Hivyo jumla ya fidia ambayo Mlalamikiwa atatakiwa kuwalipa Walalamikaji ni shilingi 800,000/= kama ataamua kuwalipa fidia ya fedha taslimu pekee. Mlalamikiwa anaamriwa pia kulipa gharama za shauri za Walalamikaji.

IMETOLEWA KWA LAKIRI ya Mamlaka ya Udhibiti wa Huduma za Nishati na Maji (EWURA), Dodoma tarehe 29 Julai, 2021.


.....
KAPWETE LEAH JOHN
KATIBU WA BODI

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

COMPLAINT NUMBER: GA. 71/135/283

FELIX WILLY MTULIYA AND ANNA DANIEL FELIX.....COMPLAINANTS

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT

AWARD

*(Made by the EWURA Board of Directors at its 166th Ordinary Meeting held on
the 29th day of July, 2021)*

1.0 Background Information:

On 19th November, 2020, the Energy and Water Utilities Regulatory Authority (“EWURA”) (“the Authority”) received a complaint from Felix Willy Mtuliya and Anna Daniel Felix of Anglikana “A” Street Soko Matola Area in Sumbawanga Municipality (“the Complainants”) against the Tanzania Electric Supply Company Limited (“TANESCO”) (“the Respondent”). The Complainants claim the sum of TZS 1,223,000.00 as compensation for damaged home electrical appliances following an alleged electric fault in the Respondent’s infrastructure.

The Complainants state that on a Sunday afternoon on 27th September, 2020 there was a fault at the transformer in their area and as a result of that fault several electrical appliances in their house were damaged. The Complainants state further that the transformer which feeds them was

emitting sparks and many people in that area were affected by damage to their electrical appliances. The Complainants state that the said transformer faulted in several occasions and on 10th December, 2020 the alleged fault occurred and the Complainants reported the matter to the Respondent and was issued with Temporary Breakdown (TB) number 2511. The Complainants state further that as a result of the said fault several appliances were damaged including:

- a) 3 television sets which cost TZS. 450,000.00;
- b) 5 light bulbs all valued at 23,000.00;
- c) 3 radios all valued at TZS 450,000.00; and
- d) 2 DVD players both worth TZS. 300,000.00.

The Complainants say that in the evening of that day the Respondent's staff attended the fault at the transformer and restored power to the area but the listed items did not work again. The Complainants claim that they wrote a letter to the Respondent claiming for compensation but the claim was denied. The Complainants further state that they were aggrieved with the Respondent's reply and therefore proceeded to file this complaint praying for orders that the Respondent be compelled to pay them compensation at the tune of TZS 1,223,000.00.

Upon receipt of the complaint, on 16th December, 2020 the Authority ordered the Respondent to submit its defense to the complaint within twenty-one [21] days as required by the EWURA (Consumer Complaints Handling Procedures) Rules, GN 428/2020.

The Respondent filed a reply to the complaint on 22nd February, 2021 where they admitted that there was a fault at their distribution line on the fateful day, but denied the rest of the Complainants' claims and allegations.

Efforts to mediate the parties were done on 19th February, 2021 at Sumbawanga Municipality but were not successful. The matter was therefore referred to the division of the Authority for hearing.

2.0 The Hearing:

The Complainants in this case are spouses. During hearing which was held on 20th and 21st May, 2021 one spouse named Anna Daniel Felix appeared whereas the Respondent was represented by Mr. Florence A. Kahatano the Zonal Legal Officer of the Respondent. The following issues were framed for determination:

- 1) whether Respondent is responsible for the electric fault which damaged the Complainants' appliances;***
- 2) if the answer in the first issue is in the affirmative, whether the Respondent is liable for the loss suffered by the Complainants;***
- 3) whether the Complainants' claims are justified; and***
- 4) any remedies for the parties.***

At the hearing the Ms Anna Felix Willy Mtuya stood as the only Complainants' witness and did not tender any documentary or material piece of evidence. The Respondent's side called three witnesses namely Samuel Shimo, the Respondent's Linesman (RW1), Joel Enos Mwakasole, the Respondent's Artisan (RW2) and Charles Faustine, the Respondent's Safety Engineer for Sumbawanga Office (RW3).

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 Act"), the Electricity (General) Regulations GN. 63/2011, and the Energy and Water Utilities Regulator authority (Consumer Complaints Settlement Procedure) Rules GN. 428 of 2020. We have further considered the oral

testimony of the witnesses together with documentary evidence tendered during the proceedings. Our decision on the issues raised is as follows:

3.1 *Whether the Respondent is responsible for the electric fault which damaged the Complainants' appliances;*

In determining this issue, we have considered the testimonies of the witnesses of both parties as well as the documentary evidence adduced as well as the law relating to the claim. CW's testimony-in-chief was just short, where she started by stating that on the fateful day she was at home where she also runs a shop attached to the main house. CW stated that on 27th Sept 2020 noon time, she heard a loud bang at the transformer and people were shouting "fire"! CW said they heard the shouting since they live close to the transformer. After hearing such bang and the shouting, CW said she called the Respondent to inform them about the fault at the transformer. CW further states that she could physically see light bulbs exploding and that she later found out that the TVs, radios, decks, and subwoofer had also been damaged. CW also said that the Respondent's officials visited their home the next day and advised them to submit their claim in writing. CW further testified to the effect that many people had their appliances damaged on that day but some did not complain. CW said that few people lodged complaints to the Respondent but their claims were dismissed. CW insisted that the problem was at the Respondent's transformer and that the Respondent is using lack of protection for the Complainants' appliances as an excuse to avoid liability for their own fault. CW said she was not satisfied with the Respondent's reply and therefore filed this complaint to the Authority claiming for compensation.

The Respondent's witnesses (RW1, RW2 and RW3) admitted that indeed there was a fault at their transformer supplying power to the Complainants. The witnesses also admitted that following the transformer fault there was over voltage since the test confirmed that power supplied to customers was 351V which is way beyond the normal range of 230+ or -6%. The

Respondent's witness also did not object the fact that some customers including the Complainants suffered loss due to damage to their electrical appliances and that RW3 who visited the customers confirmed to have physically seen the damaged customer's appliances particularly those of the Complainants. However, the Respondent denied liability for the Complainants' loss on the ground that the Respondent was not responsible for the fault leading to the over voltage and that the Complainants as a customer has an obligation to protect his appliances as per the Contract for Supply of Electricity.

To begin with we have considered the law applicable in determining these questions particularly the provisions of Regulation 20 of the *Electricity (General) Regulations GN. 63/2011* which reads and we quote:

20(1) the licensee shall in conducting its licensed activities of generation, transmission, supply and installation, ensure compliance with industry's standards and best practice to guarantee protection of the public from danger"

(2) the danger referred to under this regulation includes dangers to persons, property and the environment"

(3)n/a;

(4).....n/a"

On the other hand, section 26 (5) (c) of the *Electricity Act, Cap.131* provides and we quote:

26(5): Subject to rules made by the Authority, the licensee shall be liable to compensate a customer who suffers loss of property or physical injury as a result of an act of the licensee (i.e. the Respondent) which amounts to;

(a)n/a

(b)n/a

(c) poor quality of supply.

It is also our view that based on the aforementioned provisions of the law, the Respondent has a legal duty to comply with industry's standards and best practice to guarantee protection of the public from dangers associated with its licensed activities. The danger referred to by the provisions is the danger to person, property and the environment. In other words, therefore, to zoom in on the complaint, the Respondent had a legal duty to comply with electricity supply standards and best practices, in supplying electricity to her customers including the Complainants.

Further to that, the Respondent is legally bound to compensate a customer where it is proved that the customer has suffered loss as a result of poor quality of supplied electricity. It is also our view in the very foremost that poor quality supply has a direct correlation with non-compliance with electricity supply industry's standards and best practices which the provisions of the law cited above speak about.

Our next venture was therefore to determine whether the Respondent can be relieved from the obligations under the provisions cited above only on the ground that they were not responsible for the fault at the relevant transformer or on the Complainants' failure to install protective devices. To address the above scenario, we turned to the Respondent's own evidence. During examination-in-chief by the Respondent's Advocate (RA), the Respondent's Witness number two (RW2) who attended the fault at the transformer in question stated as reproduced hereunder;

RA: What was your role in this complaint before the Division?

RW2: Last year 2020 on September 28th, I was instructed to attend a transformer at Jangwani area also known as Ngurumo transformer. We checked it and discovered that the neutral cable had melted at the cable lug which connects the neutral and the transformer bush thereby causing over voltage. After replacing the melted cable lug, we switched the transformer on and charged for five minutes. We checked the voltage and saw it was fine. We then restored power to customers.

***RA:** What was the actual cause of the overvoltage?*

***RW2:** We could not immediately identify it but I believe the case was a short circuit in the line.*

***RA:** What may cause short circuit?*

***RW2:** Short circuit may occur as a result of an accident or human activity or natural event such as winds or lightning. Short circuit looks for a weakest link.*

On our part the answer to the first question was sufficient since it provides the answer on the root cause of the problem. RW2 said categorically that upon checking the transformer they discovered that the neutral cable lug had melted thereby causing over voltage. Therefore, the problem was overvoltage caused by melting of the cable lug separating the neutral cable and the transformer bush. The rest of the testimony is irrelevant and only tends to unnecessarily lengthen the chain of causation. It suffices to say damage to the Complainants' appliances was caused by overvoltage which was caused by melting of the cable lug at the transformer.

The Complainants' claim is based on damage to home electrical appliances due to overvoltage which was caused by a fault at the transformer (melting of the cable lug). It is our considered view that we do not find merits in the explanations given by the Respondent that said cable lug melting was also caused by a short circuit in the system, which may be caused by either human activity or natural phenomena such as wind. This is due to the fact that during hearing the Respondent proved neither the alleged human activity nor the alleged natural phenomenon. The likely scenario that may have caused the cable lug melting could be wear and tear, which it was the responsibility of the Respondent to discover to and remedy it through regular inspections. In any case this would still be the Respondent's responsibility to identify the fault and fix it before it causes loss to the customers. Failure to identify and fix the early warning of the fault before it happened makes the Respondent responsible for the fault and the damage and loss resulting from it.

The second limb of the Respondent's defence is that the Respondent is not liable for the Complainants' loss since the Complainants has breached the terms of the Electricity Supply Contract for failing to install protective devices to protect his appliances. We have considered the Respondents argument and the said contract at length and have the following to say. What is termed as the contract for supply of electricity is a document usually attached to the Electricity Connection Application Forms. The said document is signed by both the applicant who is the customer such as the Complainants and the service provider in this case the Respondent. The said document is written in fine prints and in English which is a foreign language. The document is a standard contract which the customer has no right to negotiate or cause amendments thereto. Finally, there is no evidence that the said document is ever issued to the applicant as a copy. It is in one original copy and is kept by the Respondent only. We can confidently say that given the nature of the document as stated above and the position the Customer is in when applying for connection to electricity service, it would be highly prejudicial and unfair to say the least if it were used against the customer (Complainants).

Without prejudice to our observation and view on the contract for supply above, we invoked the *principle of fundamental breach* to determine this issue. According to this doctrine which was developed by case law, the party cannot escape liability by use of an exemption clause where the said party is in breach of a fundamental obligation. It is our view that when the Complainants applied for electricity connection he stated clearly the intended use of that electricity which is domestic use. The Respondent therefore was contracting to supply electricity to the Complainants for domestic use. According to the industry's standard as developed by the Tanzania Standard TZS 1373:2011 for Power quality – Quality of Supply, Section 3.25 the standard voltage for supply in low voltage network (single phase line) is 230V. The same standard on Section 4.3.2 provides the deviation of $\pm 10\%$ from standard voltage. The same voltage value for single

phase line is stipulated under Section 1.1.4 of the Respondent's Engineering Instruction Manual, of 2012 and approved by the Authority. The bottom line and what we intend to hold here is that the standard amount of electricity to be supplied to single phase domestic user such as the Complainants is a fundamental issue in the contract for supply of electricity. Whether or not this standard was written in the said contract is not of much legal relevancy since it is a legal fact it is therefore an implied term. In other words, it is both a fundamental and implied term in the contract for supply of electricity. The issue of standard of electricity supplied is so essential and fundamental that its breach rendered the whole contract for supply of electricity meaningless. It is therefore our settled view that the supply of electricity below or above the standard voltage is a fundamental breach and thus, the Respondent can not escape liability by hiding behind an exemption clause.

For avoidance of doubt and without prejudice to the foregoing, the Respondent's technical staff (RW3) confirmed that the wiring installation of the Complainants was found intact during inspection. RW3 further noted that the protective devices were available namely main switch and circuit breaker. According to the Respondent's Engineering Instruction Manual cited earlier, Section 1.3.10 the consumer's premise is required to be installed with the aforementioned protective devices such as residual current device and conform to the latest Institution of Electrical Engineers Wiring Regulation (The IEE Wiring Regulations). In that view, the customer hereinafter the Complainants had met the technical requirement for her premises to be supplied by the Respondent. It can therefore be rightly concluded that the Respondent was responsible for the electrical fault which led to damage to the Complainants' property (electrical appliances) and thereby occasioning loss to the Complainants.

3.2 *If the answer to the first issue is in the affirmative, whether the Respondent is liable for the loss suffered by the Complainants;*

It was not in dispute that the Complainants' property in terms of home electrical appliances were damaged. This is a loss suffered by the Complainants as a result of the electrical fault in issue. Since the first issue has been resolved in the affirmative, it follows therefore that the Respondent is liable for the loss suffered by the Complainants. The only sub question remaining would be to determine the amount of loss suffered.

3.3 Whether the Complainants' claims are justified;

Having resolved the first and second issue in the affirmative, we won't waste much time in discussing this issue. We therefore proceed to consider the remedies available to the parties.

3.4 Any other remedies for the parties;

The Complainants prayed for orders to compel the Respondent to pay her the sum of TZS 1,223,000.00 being compensation for the loss suffered as a result of the damaged home electrical appliances. The Respondent on her part asked the Authority to dismiss the complaint for lack of merit.

During hearing, the Complainants' witness (CW) testified that the claimed compensation is in respect of 3 tv sets, 3 radios, 2 DVD player decks, and 5 bulbs. The Respondent's third witness (RW3) testified that upon visiting the Complainants' premises to verify the effect of the electrical fault he witnessed that items such as 2 television sets, and one decoder were damaged. The list of damaged items was therefore controverted, and since the Complainants presented neither the damaged items nor any documentary evidence that he owned them, we find it hard to grant her prayers. These claims are special damages which in law must be strictly pleaded and proved, save only where the claim has been admitted. Since RW3 admitted that two TVs were not working we find it justifiable to award compensation in respect of the undisputed two televisions. The Respondent is ordered to either purchase the said televisions of the size and

specification as reported by the Complainants or pay the Complainants the sum of TZS 300,000.00 as market value of the television sets. We refrain from awarding compensation for the two decoders which though admitted by RW3 they were not included in the Complainants' claim. We cannot therefore award something which was neither proved nor prayed for.

Further to the special damages, we have considered the trauma, embarrassment and hardship the Complainants have endured especially having to put up with the Respondent's counsel assertions that the Complainants were persons who wanted to unlawfully enrich themselves. The Complainants no doubt was aggrieved with such averments which were clear in the Respondent's written defense and during cross examination. We do not consider the Complainants as people who were looking to enrich themselves but rather as people who were pursuing their legal right to a remedy against the loss suffered as a result of the Respondent's conduct. We therefore order the Respondent to pay the Complainants the sum of TZS 500,000.00 as general damages for all that they have been through in pursuing their legal rights as stated above. The total awarded sum is therefore TZS 800,000.00 which includes both general and special damages. The Complainants is also awarded costs of the complaint.

GIVEN UNDER THE SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 29th day of July, 2021.


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KAPWETE LEAH JOHN
SECRETARY TO THE BOARD