

**THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY**

**(EWURA)**

**COMPLAINT NUMBER SN.71/309/53**

**BETWEEN**

**ORYX GAS TANZANIA LIMITED..... COMPLAINANT**

**VERSUS**

**LAKE GAS LIMITED..... RESPONDENT**

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**RULING**

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On 22<sup>nd</sup> June 2021, the Complainant lodged a complaint against the Respondent complaining on the alleged selling of Liquefied Petroleum Gas (LPG) by the latter to its dealers in contravention of the Petroleum (Liquefied Petroleum Gas Operations) Rules, GN No. 825/2020 ("LPG Rules"). The Complainant alleges that the Respondent has been selling 38 kg LPG cylinders to dealers who are engaging in storing, distributing and selling illegally refilled "ORYX Cylinders" at several outlets, a practice that is in violation of the LPG Rules. The Complainant alleges that the Respondent and its dealers violates the following specific provisions of the LPG Rules:

- a) Rule 35 (1) on execution of a dealership agreement;
- b) Rule 40 (5) and 40 (6) on prohibition on the use of cylinders and seals;
- c) Rule 42 (1), 42 (2) and 42 (3) on prohibition to decant;
- d) Rule 49 (1), 49 (2), 49 (3) on cylinder sealing;
- e) Rule 50 (1), 50 (1) (b) and 50 (2) on deceptive trade practices; and
- f) Rule 51 (1) (a) and 51 (1) (b) on storage of LPG.

Based on the foregoing the Complainant prays for the following reliefs:

- a) a warning be issued to the Respondent for the above-mentioned violations;
- b) an order be issued to the Respondent to remedy the above-mentioned violations;
- c) a Compliance Order be issued against the Respondent restraining them from continued violation of the law;
- d) an order for payment of general damages be issued against the Respondent; and
- e) any other relief that the Authority may deem fit to grant.

Upon being served with the summons to file a reply to the complaint the Respondent, on 20<sup>th</sup> July 2021, lodged their reply and therein, they raised a preliminary objection on point of law, to the effect that:

- a) the complaint is bad in law for being defective; and
- b) the complaint does not show cause of action against the Respondent.

The Respondent, having raised the above objection, went on to dispute the Complainant's claim by stating that there are no business relations between the Respondent, who is a wholesaler, and the alleged dealers. The Respondent further alleges that dealers are usually required to have business relations with super dealers and not wholesaler; and therefore, whatever is alleged to have been done by the said dealers have nothing to do with the Respondent. The Respondent further states that its storage tanks are calibrated by the certification authority as required by law and the Complainant is put into strictest proof of any allegation for foul play by their part. The Respondent concludes by stating that the reliefs sought by the Complainant are not tenable in law, since the allegations in the complaint are baseless and misconceived and the same have been made with the aim of tarnishing the image and goodwill of the Respondent. The Respondent therefore prays for the dismissal of the complaint with costs.



Hearing of the preliminary objection on the point of law, was scheduled to take place on 9<sup>th</sup> August 2021; and despite both parties being served with the summons for hearing, only the Respondent's counsel Mr. Herioloth Boniface appeared and thus the matter proceeded *ex-parte*.

With regard to the first point of objection, the learned counsel Herioloth submitted to the effect that the complaint is bad in law for being defective due to the fact that the same has been brought under a non-existing law. The learned counsel submitted that the complaint has been brought under Rule 4 (1) of the *EWURA (Consumer Complaints Settlement Procedure) Rules, GN No. 10/2013* which by the time the complaint was being filed, the same had already been revoked by the *EWURA (Consumer Complaints Settlement Procedure) Rules, GN No. 428/2020 ("the Complaints Rules")*. The learned counsel Herioloth concluded by stating that with such anomaly, the complaint becomes annulity and thus the same should be dismissed with costs.

With regard to the second point of objection, learned counsel for the Respondent submitted to the effect that the complaint discloses no cause of action against the Respondent. The learned counsel further submits that looking at the complaint form, there is nowhere the Respondent is implicated in conducting illegal operations. The Complainant simply alleges that the Respondent is selling LPG to dealers who engage in illegal refilling contrary to LPG Rules. Rule 3 of the LPG Rules defines who is a dealer, super dealer and a wholesaler and looking at the said definitions, there is no direct business relationship between the Respondent and the alleged dealer. The learned counsel further submitted to the effect that, as per the LPG Rules, the Respondent is responsible for the conducts of a super dealer to whom it has a dealership agreement and not to the dealer to whom they do not have a direct business relationship.

In further submission the learned counsel for the Respondent stated that there is no specific dealer who has been mentioned in the complaint form and there is no proof of any transaction between the Respondent and the said dealer.



The learned counsel concluded by stating that the complaint has no merits and it should therefore be dismissed with costs.

We have carefully evaluated the contents of the complaint and the submissions made by the learned counsel for the Respondent. Looking at the complaint and the submissions made by the Respondent's counsel it is our considered view that the same is bad in law and should be rejected. We arrived at such decision by looking at the following.

First, and as rightly submitted by the learned counsel for the Respondent, this complaint has been brought under a non-existing law. The complaint form indicates that the same has been filed under Rule 4 (1) of *the EWURA (Consumer Complaints Settlement Procedure) Rules, GN No. 10/2013*. GN No. 10/2013 was revoked by GN No. 428/2020 and therefore, bringing this complaint under the already revoked law, makes it defective in law and the same should be rejected.

Secondly, on the point of non-disclosure of cause of action, we are in agreement with the submissions by the learned counsel for the Respondent to the effect that no cause of action has been disclosed by the Complainant. The complaint apart from simply alleging that the Respondent is selling LPG to dealers who are undertaking illegal operation, it provides no further details. It is trite law that pleadings should always be prepared in such a way to include enough information to enable the courts or administrative tribunals to establish the facts-in-issue. It is further a trite law that, in determining whether the Complainant/Plaintiff has disclosed the cause of action against the Respondent/Defendant the court/tribunal will look at the pleadings (complaint form, reply thereto and the annexures) only. In this matter, it was expected that the Complainant would provide such details like the names of the dealers alleged to undertake illegal operations, their place of business and particulars of violations. What has been annexed to the complaint form are just some photos of cylinders packed in what seem to be a warehouse, some tubes, cylinder seals and a hand written note containing some calculations, names

and signatures. The packed cylinders in the warehouse include cylinders from different brands like Oryx Gas, Mihan Gas and Taifa Gas.

Rule 5 (1) (a) of the Complaints Rules obliges the Authority to reject any complaint that discloses no cause of action. It is our considered view that, this complaint apart from being brought under a non-existing law, the same does not disclose the cause of action against the Respondent. Based on the foregoing, we uphold the objections on the point of law raised by the counsel for the Respondent and further proceed to reject the complaint with costs.

**GIVEN UNDER SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) in Dodoma this 18<sup>th</sup> day of August 2021.



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**GERALD MAGANGA**  
**DIRECTOR GENERAL**

