

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

COMPLAINT NUMBER: RP.71/135/24

MARGARETH JULIUS MZIRAY.....COMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITEDRESPONDENT

RULING

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

On 27th October 2020, the Energy and Water Utilities Regulatory Authority (EWURA) ("the Authority") received a complaint from Ms Margareth Julius Mziray of P.O Box 10823, Mwanza ("the Complainant") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The Complainant is complaining against the Respondent for the alleged trespass to Plot No. 1034, Block 7 in Mwakibete Area, Mbeya City ("disputed plot"). The Complainant, through the amended complaint, alleges that the Respondent has trespassed onto the disputed plot and construct a high-tension power line and thus denying her the opportunity to develop the said land.

The Authority, after receipt the complaint and in terms of Rule 6 (1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, GN No. 428/2020, ordered the Respondent to submit a reply to the complaint within 21 days. The Respondent, through its letter dated 13th November 2020, submitted a reply to the complaint and they stated as follows:

- a) that the disputed plot does not belong to the Complainant but it is the wayleave for the high-tension power line 220KV. The wayleave is 30 meters on both side and parallel to that line there is another power line 33 KV which has the wayleave of 5 meters both sides. Both power lines were constructed before the alleged ownership by the Complainant;
- b) that as per the complaint, it is only the plot alleged to be owned by the Complainant that is within the wayleave and all other plots are outside the wayleave and are in order and therefore the approved masterplan in that respective area should be used; and
- c) that any attempt by the Complainant to develop the disputed plot will pose a danger to the lives of people and property as the said plot is within the wayleave for the high-tension power line. In further reply the Respondent is not liable to pay any compensation to the Complainant since it is the Complainant who has trespassed onto the Respondent's land.

Attempts to resolve the matter amicably were taken in vain by EWURA and thus the matter was referred to the Division of EWURA with a view to conducting a hearing. Hearing of the complaint was scheduled to be held for four consecutive days from 27th April 2021. On 27th April 2021, when the matter was called for hearing, Mr. Florence Kahatano, the learned counsel for the Respondent raised two preliminary objections on point of law to the effect that:

- a) EWURA does not have jurisdiction to determine this complaint; and
- b) the complaint is time barred.

The learned counsel for the Respondent submitted to the effect that, as per the complaint form, the nature of complaint is on trespass and that EWURA does not have jurisdiction to determine on issues related to ownership of land. Learned counsel Kahatano submitted that as per section 3 (1) of the Land Disputes Courts Act, Cap. 216) when read together with section 62 of the Village Land Act, Cap. 114) and section 167 of the Land Act, Cap. 113) the bodies with powers to determine on land matters are:

- a) Village Land Council;

- b) Ward Tribunal;
- c) District Land and Housing Tribunal;
- d) High Court Land Division; and
- e) Court of Appeal of Tanzania.

Learned counsel Kahatano concluded his submission by stating that EWURA is not among the institutions mentioned in the laws mentioned above and thus it was improper for the Complainant to bring this complaint to EWURA.

On the issue of time limitation, learned counsel Kahatano submitted to the effect that Rule 25 (1) of the now revoked EWURA (Complaints Handling Procedure) Rules, GN No. 10/2013 which is *pari materia* with Rule 26 (1) of the EWURA (Complaints Handling Procedure) Rules, GN No. 428/2020, prescribes the period of limitation for complaints to be submitted to EWURA. As per Item 7 of the Seventh Schedule to GN No. 428/2020, the period of limitation for the matter at hand is twelve months. Learned counsel Kahatano states that the high-tension power line in the disputed plot was constructed in 1994 and therefore this matter has been brought to EWURA well out of time.

On her part, the learned counsel for the Complainant Ms Beatrice Mwahandi, responded to Mr. Kahatano's submission by stating that the complaint is proper before the Authority. Stating on the issue of time limitation, learned counsel Mwahandi submitted to the effect that this complaint has been filed well within time, since the Complainant became aware of the alleged trespass in 2009; and since then, she has been following it up in vain with the Respondent. Learned counsel Mwahandi submitted that the Complainant wrote several letters to the Respondent on diver dates in 2010, 2015, 2016 and 2020 in a bid to resolve the matter. Learned counsel Mwahandi submitted to the effect that the time in which the Complainant has used in resolving the matter with the Respondent should be excluded in computing the limitation period. In cementing her arguments, the counsel for the Complainant cited the Authority's decision in Complaint Number *EWURA NP. 71/135/03 between Staff House VTC represented by Raphael Joseph Nyanda versus TANESCO* which states at page 8 as thus:

“it is well settled law that the time in which the Complaint was seeking remedies from the regulated supplier is excluded when computing the time for the basis of establishing time limitation. As such, it is our opinion that the complaint was lodged within the allowed timeframe and thus not time barred”

With regard to the issue of jurisdiction, learned counsel Mwahandi submitted that, EWURA has the requisite powers and mandate to entertain this complaint, since the matter emanated from a regulated activity. Learned counsel Mwihandi cited the decision of Mutungi, J in Civil Case Number 70/2016 between *Ujenzi Solving Co. Ltd versus DAWASA and DAWASCO (Unreported)*. In that case, Mutungi, J stated and we quote:

“as if not enough, what amounts to a complaint is also well settled. Section 34 (1) of the Act states as follows: “This section shall apply to any complaint against the supplier of regulated goods or services in relation to any matter connected with the supply, possible supply or purported supply of goods or services”

It is learned counsel Mwaihandi’s argument that since the alleged trespass has occurred in the course of the Respondent undertaking a regulated activity, it follows therefore that EWURA has the requisite jurisdiction and thus the objection should be dismissed with costs. In his rejoinder, learned counsel Kahatano reiterated what he submitted-in-chief.

We have gone through the submissions of both parties and we are very thankful for their submissions. We would like to start by deciding on the issue of limitation. It is trite law that preliminary objections on point of law should only be on issues of law and not extend to issues of evidence. In this issue we are guided by the most celebrated decision by the defunct East African Court of Appeal in the case of *Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd [1969], EA, 696* which stated that preliminary objections on point of law are on pure point of law and when they touch on issues of evidence, they cease to be preliminary objections. In this matter if you go through the submissions by both parties on the issue of limitation, it is clear that they

touched on issues of evidence. In both submissions the issue on when did the alleged trespass occurred has been central. Learned counsel Kahatano submitted to the effect that the Respondent has been in occupation of the disputed plot since 1994, whereas counsel Mwihandi alleges that the Respondent trespassed onto the disputed plot from 2009. Based on the foregoing, it is clear that, without going through the evidence, it will not be easy to ascertain on when the period of limitation starts to count.

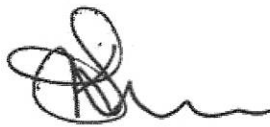
This matter could have been easier if the parties or one party could have submitted in their respective pleadings' details on when the alleged trespass occurred. Going through the Amended Complaint Form, it only specifies the nature of complaint as trespass without going into details on when such trespass occurred. Furthermore, the Respondent in its reply to the complaint only stated its rights to the disputed plot without providing details on when the high-tension power line was constructed. Based on the foregoing, it is our considered view that at the moment, we are unable to state whether the complaint is out of time or not; since by so doing we will be compelled to evaluate evidence and thus find ourselves going against the principles laid out in the case of *Mukisa Biscuits* cited above. Based on the foregoing, the preliminary objection on the point of law to the effect that this matter is time barred is overruled.

With regard to the issue of jurisdiction, we would like to state at the outset that, the issue of trespass cannot be determined without first determining on who is the owner of the disputed plot. As per section 34 (4) of the Electricity Act, Cap. 131, EWURA is required, after receipt of an application from the owner of the land to compel the licensee (i.e. the Respondent) who has placed an electric supply line to his land to alter or remove the said line from the land in dispute. For avoidance of doubts, we quote the said provisions as thus:

"Upon application by owner of land on which a licensee has placed an electric supply line, the Authority may order the licensee, subject to any condition, alter the position of the line or remove the same".

As per the above cited provision of the law, EWURA can order a licensee (i.e. the Respondent) to alter or remove the power supply line from any land upon application by the owner; but it is our considered view that such power can only be exercised where there is no dispute on who is the owner of such land. In this matter there is a dispute on who is the owner of the disputed plot. It is against the foregoing, we are tempted to agree with the submissions made by the learned counsel for the Respondent that as per the Land Disputes Courts Act, the Land Act and the Village Land Act EWURA does not have jurisdiction in determining cases on land ownership. With regard to the decision of Mutungi, J in the case cited above, it is our considered view that the said law is inapplicable in the matter at hand; since the matter before us is on trespass onto the disputed plot, which has its own forum for determining it as per the laws cited above. Based on the foregoing, we are in agreement with the submission made by the counsel for the Respondent to the effect that EWURA does not have a requisite jurisdiction in determining land cases. In the final analysis, we accordingly dismiss the complaint and the Complainant is at liberty to seek for remedies in the appropriate forums subject to the requirements of the law. Each party to bear its own costs.

GIVEN UNDER 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