

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

COMPLAINT NUMBER: GA.71/135/322

LAZARO TRAUS MKAMA.....COMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT

HEARING AWARD

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

1.0 Background Information:

On 1st December, 2020, the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") received a complaint from Lazaro Traus Mkama of Nyamagana Ward in Mwanza City ("the Complainant") against the Tanzania Electric Supply Company Limited ("TANESCO") ("the Respondent"). The Complainant is claiming compensation from the Respondent for damage to his electric motor used to operate a grain milling machine which was caused by an alleged electric fault in the Respondent's electricity supply system.

The Complainant states that he operates a milling machine at Miembeni Area, Nyamagana Ward within Mwanza City. The Complainant continues to

state that in November, 2020 there were power problems at his area of business and that as a result of those problems his electric motor with 15HP high Chinese type was damaged. The Complainant claims that since then he has been unable to carry on his grain milling business and he is financially ruined. The Complainant says he submitted his claim to the Respondent but it was denied on the ground that the Complainant was to blame for the poor infrastructure at his grain milling house. Following the Respondent's reluctance to heed the Complainant's claim, the Complainant filed this complaint praying for orders for compensation against the Respondent.

Upon receipt of the complaint, on 2nd December, 2020 the Authority ordered the Respondent to submit a reply to the complaint within twenty-one [21] days as required by the EWURA (Consumer Complaints Handling Procedures) Rules, GN 428/2020. The Respondent filed its defence on 14th December, 2020 and admitted only that there was a problem at the Respondent's transformer on 15th October, 2020 but denied the claim that the said fault was responsible for the Complainant's motor damage. The Respondent further claimed that the Complainant's internal distribution infrastructure was poor lacking a main switch and phase detectors. The Respondent therefore denied liability for the Complainant's loss.

Efforts to mediate the parties were done but were not successful. The matter was therefore referred to the division of the Authority for hearing.

2.0 The Hearing:

During hearing which was held between 28th June, 2021 and 2nd July, 2021 where the Complainant appeared in person and the Respondent was represented by Ms. Theresia Masangya the Zonal Legal Officer of the Respondent. The following issues were framed for determination:

- 2.1** *whether the Complainant had an electric Motor operating a milling machine;*
- 2.2** *if the answer to the first issue is in the affirmative, whether the said motor was damaged due to an electric fault in the Respondent's Supply system; and*
- 2.3** *what remedies if any are the parties entitled.*

At the hearing the Mr. Lazaro Traus Mkama testified and had three other witnesses but did not tender anything as exhibit. The other Complainant's witnesses include; Mr. Lazaro Traus Mkama himself as **CW1**, Hassan Shaban resident of Miembeni as **CW2**, Ndagile Magambo as **CW3**, and Christopher Edward also resident of Miembeni as **CW4**. The Respondent's side called only one witness namely Julius Alphonse Venance the Regional Safety Engineer of the Respondent's Mwanza Regional Office as **RW**. The Respondent's side also tendered four exhibits namely; TB number MWZ 1020TB-2036 regarding Lazaro Mkama admitted as exhibit **R1**, claim form admitted as exhibit **R2**, copy of the letter dated 23rd October 2020 admitted as exhibit **R3**, and black white photos showing the internal infrastructure of the Complainant's milling machine house admitted as exhibit **R4**.

At the conclusion of the hearing parties were granted fourteen days to submit their final written submissions. At the expiry of the said period none of them filed final written submissions.

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 and the Electricity (Supply Services) Rules, GN.387 of 2019. 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 Complainant had an electric Motor operating a milling machine;

In determining this issue, we have considered the testimonies of the witnesses of both parties as well as the documentary evidence adduced. The Complainant's testimony in chief was just short, where he started by stating that until October, 2020 he was operating a grain milling machine at Miembeni Street, Bugando Area in Mwanza City. CW stated further that the said milling business came to a standstill since mid-October, 2020 when its electric motor was damaged as a result of poor quality of electricity supplied by the Respondent. To prove his claim, he called three more witnesses all of whom confirmed that indeed he had a grain milling machine in the area where they also reside. The other witnesses CW2, CW3 and CW4 also said that the said business has been inoperative since October, 2020 due to damage to the machine. On the other hand, the Respondent's only witness RW stated that on the 15th October, 2020 the Complainant reported that he had no electricity at his place of business and that on 16th October, 2020 the Respondent's staff including the RW attended the breakdown and restored power in the area. RW continued to state that the Complainant returned again on 23rd October, 2020 complaining that his electric motor has been damaged. RW said he visited the Complainant's milling machine and managed to see a dismantled alleged electric motor. RW tendered a photo of the said electric motor which was admitted as exhibit R4.

It appears to us therefore that both parties acknowledge that the Complainant has always had a grain milling business which the Respondent connected and supplied him with electricity for operating the machine. The

damaged and dismantled electric motor which the Respondent's witness saw on visit and during the site visit by the Division of the Authority is in our view the same motor which was used to run the milling machine. When this complaint came for hearing, it was eight months since the motor was damaged and business ceased. No prudent businessman would stop his lucrative business for eight months only to make a fictitious claim for a motor. We are satisfied that the Complainant has a genuine complaint and that the Respondent has not contradicted the fact that he owns and operates a grain milling business which was dependent on an electric motor which is now damaged. We will now move on to determine whether the damage to the Complainant's electric motor was caused by a fault in the Respondent's distribution infrastructure.

3.2 *If the answer to the first issue is in the affirmative, whether the said motor was damaged due to an electric fault in the Respondent's Supply system;*

It is not in dispute that the Complainant's property in terms of an electric motor was damaged. However, to determine whether the Respondent is liable for the loss suffered by the Complainant a closer look at the evidence and the law is required. CW1 insisted that his motor was damaged as a result of the power problems caused by a fault in the Respondent's infrastructure.

The Respondent's witness (RW1) admitted that indeed there was a fuse fault at their transformer supplying the Complainant. The witnesses also admitted that following the transformer fault there was power breakdown in the area where the Complainant's operates his milling business. However, RW said the power breakdown in the said area was attended and electricity was restored on 16th October, 2020. RW said further that since the Complainant did not have phase detectors at his distribution board it is very likely that he was trying to run his motor on a single phase which is likely to affect the motor.

On the other hand, the Complainant says he was unable to operate his machine since 15th to 22nd October, 2020 and finally made a written complaint to the Respondent on 23rd October, 2020.

During cross examination the RW was asked what effects may be caused by fuse cut, and he said it may cause electricity problems but did not go into details as to the nature of problems likely to occur. Upon further examination of RW by the members of the Division he said the fault affected phase 2 of the line and that such a fault is likely to affect a customer using a three-phase line.

During site visit which was conducted at the end of the hearing, the Division observed that the alleged damaged motor was lying on the floor of the milling machine house. It was also observed that the Complainant's circuit breaker was in fact working properly and not malfunctioned as claimed by RW. We further observed that there was indeed no main switch and phase detectors. However, the issue of main switch had been resolved earlier when RW was asked whether the Complainant due to the nature of his business needed a main switch and RW said he did not. Therefore, presence of a full functioning Circuit Breaker was sufficient and that explains why he was connected to the service without a main switch. The unresolved issue was therefore the absence of phase detectors. Phase detectors are three bulbs each one representing one phase where the customer is connected to a three-phase line. Standard operating procedure requires that a customer should switch on all the three bulbs which have different colours to satisfy himself that all the phases are available before starting the motor. Given the fact that the Complainant was a three-phase customer, and given his meager knowledge of electricity, and considering the nature of the fault which was on the second phase thus affecting customers connected on three phase line; we find it acceptable to conclude that the damage to the Complainant's motor was caused by the fuse fault in the Respondent's supply system.

3.3 Any remedies for the parties;

The Complainant prayed for orders to compel the Respondent to pay her the sum of TZS 2,200,000.00 as compensation for the loss suffered as a result of the damaged electric motor. The Respondent on her part asked the Authority to dismiss the Complaint for lack of merit. CW1 prayed that the Respondent be ordered to compensate him the damaged electric motor which is 15HP, high and costed him 2.2 million in 2018. The Respondent contended that notwithstanding the presence of the alleged electrical fault, the Respondent is not liable for the loss since the Complainant had no phase detectors which could have alerted him not to out his motor to work as one phase of the power line was not available.

We have examined the evidence in this regard and although the first two issues have been answered in the affirmative, we considered whether the facts alleged by the Respondent constitute contribute negligence on the part of the Complainant. The Respondent's only witness RW told the Division that the Complainant had not installed phase detectors which in the event of an electrical fault causing one phase not to function it would have alerted him and therefore he should not have started his motor.

Although the installation of phase detectors is not a pre-requisite for a three-phase customer to be connected, it is nevertheless a recommended operating procedure for any prudent customer. During his testimony CW4 who was present at the milling machine when the motor malfunctioned said that;

When I asked what the issue was and I was told it was electricity. The complainant said he was going to call the technician. After 20 minutes the technician came and what I remember that, the technician said to the complainant "I have advised you many times to call TANESCO and ask them to rectify"


Although it was not made clearly as to what the Complainant (CW10 had been advised by his technician, but it is clear that whatever he had been advised had a positive impact in preventing his motor from being damaged by electrical accidents. We are convinced installation of phase-detectors would have served a great purpose just as it is commonly used by other customers such as those with block brick layer machines. The CW1 insisted that his tube light was sufficient to inform him that electricity was available. However, what CW1 seemed not to understand is that a tube light is connected on a single-phase line and therefore it is not affected when the two phases are not available. CW1 should have sought and implemented professional advice to install phase detectors which could have alerted him about the presence of all phases before operating his motor. His omission therefore, contributed to some extent to the damage to his motor and the resultant loss.

It is also worth noting that CW1 did not disclose the value of the motor in the complainant form. He only prayed for compensation with a new motor. At the hearing CW1 stated that the damaged motor costed him TZS 2,200,000.00 in 2018 but was unable to substantiate his claim with corroborative evidence such as purchase receipt. As a cardinal rule of civil claims that special damages must be proved. We find ourselves hands tied to award special damages in this complaint. The prayer for special damages in respect of the motor is therefore denied for lack of proof.

We made up our mind to award the Complainant general damages for the psychological trauma and financial stress he has endured since October, 2020. However, considering the fact that the complainant himself contributed to the damage of his own motor by failure to install phase-detectors, we reached a decision to award him TZS 400,000.00 only as general damages for financial distress and psychological torture since October, 2020. Since the complaint hearing was conducted within the parties' place of resident and business and since no legal fees were

involved, we find it prudent that each party should bear his or her own cost of pursuing the complaint.

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



.....
KAPWETE LEAH JOHN
SECRETARY TO THE BOARD