

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

COMPLAINT NUMBER: EWURA/33/1/345

BETWEEN

MAJOR (RETIRED) EMMANUEL VAVUNGECOMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITED..... RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 168th Extra Ordinary Meeting
held at Dar es Salaam on the 10th day of March 2017)*

1.0 Background Information

On 29th September, 2015, Major (retired) Emmanuel Vavunge ("the Complainant") a resident of Mbezi Mwisho Area, along Goba road in Dar es Salaam filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against the Tanzania Electric Supply Company (TANESCO) ("the Respondent"). The claim against the Respondent is for payment of TZS 154,595,000.00 as compensation for the damage caused by fire at his house and household items following the fire incident which occurred on the 25th July, 2014 at his residence located at Mbezi Mwisho Area,

along Goba Road, Kinondoni District in Dar es Salaam Region ("the premises").

The Complainant claims that on the fateful day there were power fluctuations in his area and he left home to the City Centre and the rest of the family members left home to different destinations. The Complainant states that a young granddaughter was left home alone and was playing outside. The Complainant further stated that there was no power during the early hours on that day. However, around midday he was informed by a neighbor that his house was on fire. The Complainant further claims that upon being notified he immediately called the Police, the Respondent and Fire and Rescue Department and he immediately returned home. Upon reaching home the Complainant found the house almost completely gutted by fire and although officials from the Fire and Rescue had arrived there was little they could do to salvage anything from the house. Luckily there was neither death nor injuries to humans. The premises which has four (4) bedrooms one of which was self-contained was a family house used for residential purposes.

After the fire incident the Complainant reported to the Police and wrote to the Manager of TANESCO at Kimara Office. There was a series of communications between the Complainant, the Ministry of Energy and Minerals and the Respondent (TANESCO). After following up the matter with the Respondent unsuccessfully, the Complainant filed a complaint at the Authority.

Upon receiving the complaint, the Authority ordered the Respondent to submit a reply to the complaint which he did by submitting his reply on the 15th October, 2015. In their reply to the complaint the Respondent denied any liability by stating that the source of fire was not the Respondent's electricity supply infrastructure. Efforts to mediate the dispute did not yield any positive results, hence the matter proceeded for a hearing.

2.0 Hearing Stage

During hearing which commenced on the 15th February, 2016, the Complainant was represented by Lay James, learned advocate whereas the Respondent was represented by Ms Diana Mahatane, learned advocate. The following issues were framed for determination:

1. what was the source of the fire?
2. whether there was negligence on either part; and
3. what reliefs or remedies are the parties entitled to, if any?

During hearing, the Complainant's side called six (6) witnesses to testify and tendered five exhibits (C1-C5). The received exhibits were the letter from the Complainant dated 25th March, 2015 (exhibit "C1"), a letter from the Respondent dated 10th July, 2015 (exhibit "C2"), a letter by the Respondent dated 20th August, 2015 (exhibit "C3"), a letter from the Complainant to the Respondent dated 27th August, 2015 (exhibit "C4") and Fire Investigation Report (exhibit "C5"). The Complainant also filed written closing submissions. The Respondent on the other side called one witness and tendered one exhibit a Fire Cause Check List and a Sketch Map of the electricity line to the premises both marked as (exhibit "R1"). The Respondent also filed final 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") and the EWURA (Complaints Handling Procedure) Rules, GN No. 10/2013. We have also considered the oral testimony of the witnesses together with

documentary evidence tendered during the proceedings. Our decision on the issues raised is as follows:

Issue No. 1: What was the source of the fire?

It has been the Complainant's argument which is supported by his testimony as CW3 as well as that of CW1, CW2 and CW4 that the fire which destroyed his house was caused by an electric fault resulting from the Respondent's negligence. In their testimonies they said their area had been experiencing power outages and on the fateful day there was power outage from the morning until when power returned around midday. CW1 who is the Complainant's neighbour stated during hearing that when power returned to their area it came in high voltage and thus causing damage to his appliances such as a television set, radio and fridge. The other witnesses CW2 and CW3, build up their testimonies based on the story by CW1. This is due to the fact that both were not at home when the incident happened. CW4 who is a five year old girl said she saw smoke coming out of the premises and ran to call her aunt. CW4 did not describe which room exactly the smoke came from. However, the testimonies of CW1 and CW3 show that the premises electricity infrastructure was completely destroyed by fire. CW3 had to apply for a new LUKU meter and a new supply line for his house which is at the rear of the premises.

On the other hand the Respondent disputed any fault at their system. In their reply dated 20th August, 2015 they said that an inspection conducted had revealed that the electric supply system which connects the Complainant's house was found to be intact, which means there was no fault at their side. However, in his testimony RW1 said the meter and the lead-in-wire were completely damaged by fire and the cable connecting the house to the pole was bruised by fire. RW1 further maintained that he did not know the cause of the fire. This testimony contradicts the letter (exhibit "C3") and the fire report

(exhibit "R1") both from the Respondent, which state that the Respondent's infrastructure was intact after the fire. The testimony of RW1 in one way or another supports the testimony of CW3 and CW2 with regard to the damage done to the supply infrastructure of the Respondent. The only point of departure between the testimonies of the Complainant and that of the Respondent is on the location of the meter. The Complainant side claims that the meter was in the kids' room next to the sitting room whereas the Respondent's side insists that the meter was at the sitting room.

Our analysis of these testimonies came to a conclusion that despite the lack of sufficient information on the cause of fire both from the Respondent and the Fire and Rescue Department, yet the case must be decided based on the facts and basic expert evidence adduced. From the outset one may conclude that none of the parties was able to prove scientifically on the source of the fire that destroyed the Complainant's house. The Complainant simply alleges that in the absence of any electrical activity at home on that day and in absence of any other energy use activity at the premises the only plausible source of fire could have been none other than electricity. On the other hand, the Respondent advanced a contradicting story about its infrastructure being intact and that they are not liable for any loss beyond the meter. Equally, the Respondent did not know the source of the fire.

Expert opinion has shown that cases of short circuit or fire outbreak where electric current is of high voltage are almost none where all appliances or switches are off. However, there is a possibility of explosion of the meter where the current is of very high voltage say above 450V. This brings us to the testimony of CW2, CW3 and CW4 that there was nobody at the premises and the appliances, sockets and switches therein were switched off to avoid damage by electricity due to irregular power outages. If this was the case therefore, the only possible cause for fire outbreak when power was restored

at the area, and if it was of a high voltage, could be through explosion of the meter. We are of the said view due to the following reasons:

First, it is undisputed fact that the LUKU meter at the premises was inside the house and that CW4 saw smoke from inside and at the moment it is irrelevant which room the meter was. If fire was due to explosion of the meter, smoke could have come from inside. Since the testimonies of the Respondent has been contradictory on whether its infrastructure including the meter was intact, the only reasonable conclusion is that the same was destroyed by fire which resulted from explosion due to high voltage current.

Secondly, given the inconsistencies in the Respondent's case regarding the state of the power supply system at the premises after the fire we are convinced that power was restored to the area at a high voltage current which resulted into a fire explosion which destroyed both the Respondent's infrastructure and the premises.

Thirdly, the uncontroverted testimony of CW1, the neighbour who stated to the effect that his appliances were also damaged by electricity on that fateful day and the fact that the Complainant had to re-apply for a new meter and service line to connect power to his back house further corroborates the possibility of there being a high voltage at the Complainant's vicinity.

In a nutshell, our conclusion is to the effect that, the only possible cause for fire outbreak at the Complainant's premises is high voltage which resulted into explosion of the meter and hence the fire.

Issue No.2: Whether there was negligence on either part

It is trite law that in order for one to establish negligence, the Plaintiff/Complainant has to establish that there was a duty of care on part of the Defendant/Respondent and such duty has been breached and as a result occasioning loss to the said Plaintiff/Complainant.

The issue of negligence was alleged by both sides. The Complainant on his part alleged that the Respondent was negligent in supplying electric power at a high voltage. On the other hand, RW1 stated in his testimony that, Clause 4 and 5 of the Service Agreement (usually entered between a customer and TANESCO) requires the customer to always protect his appliances. RW1 went on to state that the Respondent was not liable for any loss for damage caused by electricity beyond the meter. We find it hard to agree with the testimony of RW1 due to the fact that, the nature of protection needed is that intended to protect the customer for actions that are beyond the Respondent's control. The obligation to install protection measures by the customer does not extend to where the damages/risks are due to the Respondent's own negligence. Aforesaid notwithstanding, we considered the fact that they left home having switched off all the appliances a fact which was also supported by CW5 who said he saw the sockets and switches were off. This act is by itself protection because the state of electricity was known to be unstable.

Summing up in this issue, our decision is to the effect that, the Respondent owes a duty of care towards its customers including the Complainant and in this matter such duty was breached.

Issue No.3: What reliefs or remedies are the parties entitled to, if any?

The Complainant claims for TZS. 154,545,000.00 as compensation for the value of his house and house hold tools therein. Having resolved the second issue in favour of the Complainant, we proceed to conclude that the Complainant is entitled to a remedy. However, the claim presented before the Authority had to be substantiated or proved.

We have noted that the Complainant did not present grounds or evidence to support the amount of compensation claimed. The Complainant neither produced the valuation report nor the bill of quantities that would have guided us in assessing the amount of compensation to be paid. Furthermore, the Complainant did not state when he constructed the premises and the costs involved. In the absence of such evidence, the Authority has considered the minimum value of a similar house in the market and the experience from the Tanzania Building Agency showed that a low cost house of the size of the Complainant would cost from TZS 36,000,000.00 to TZS 40,000,000.00. However, the said prices may differ depending on the location and other factors. The prices may also differ from one estate developer to another. We have therefore, for the reasons stated above, decided to award the Complainant the sum of TZS 40,000,000.00 as compensation for his premises that was destroyed by an electric fault caused by the Respondent.

As for the household items, we have considered the claimed value less depreciation at the rate of 25% per annum for two years. The value of the items therefore would be valued at TZS 8,277,500.00. The Complainant is therefore awarded compensation for the household items at the tune of TZS 8,277,500.00 which makes the total compensation to be TZS 48,277,500.00. The Complainant is also awarded the costs of the complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority
(EWURA) at Dar es Salaam this 10th day of March, 2017.



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FELIX NGAMLAGOSI
DIRECTOR GENERAL

