

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

COMPLAINT NUMBER: EWURA/33/1/325

BETWEEN

MUSSA RAPHAEL RUKIGWACOMPLAINANT

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 6th March, 2015 Mr. Mussa Raphael Rukigwa a resident of Igoma, Mwanza ("the Complainant") filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The claim is for the payment of TZS 20,500,000.00, being compensation for the value of shop items destroyed by a fire said to have been caused by an electric fault alleged to have been caused by the Respondent Company. The Complainant also claims for payment of TZS. 3,999,000, being the value of electrical appliances which were destroyed by the said fire. The alleged fire incident took place at his shop and residence in Igoma Area at the early hours of 9th February, 2015.

The Complainant states that on the day of the incident he and a relative were sleeping at the damaged shop only to be awakened by the noises shouting fire. The Complainant states that following the noises they woke up and came out of the house through the back door, where he realized that the LUKU meter at his shop was in flames. The Complainant further claims that the fire spread to other parts of the shop through the electric cable which runs from the meter to inner parts of the shop. The Complainant and other people at the scene tried to put the fire off but the severity of the fire made it almost impossible to fight it and they called TANESCO, Fire and Rescue Department and the Police. Fire fighters arrived at the scene around 8:00 am and they succeeded to contain the fire but only after the cable connecting the pole and the house broke and the fire had subsided. However, by the time the fire was completely put off there was nothing to salvage from the shop and all the shop items including some appliances and personal effects were destroyed by fire.

The Complainant stated further that after the fire has been put off the Respondent staff arrived at the scene but proceeded to a neighbouring house and took measures of the electric current to see if there was any problem with in their system. A few minutes later the Complainant heard the Respondent staff announcing to all residents in that area that they should turn off their appliances because the neutral at the Respondent's transformer in that area had failed. The Complainant further states that the next day he wrote a letter to the Respondent asking for compensation and followed up after a week only to be given a piece of a newspaper with an article saying "TANESCO cannot pay compensation for the loss suffered due to electrical fires". The Complainant then decided to file this complaint with the Authority.

The Authority ordered the Respondent to file a reply/defence to the Complainant's claims via a summons to file defence issued on the 30th March, 2015. The Respondent replied via the letter dated 16th April, 2015, where

despite admitting that there was the failure of neutral cable at the transformer supplying electricity to the Complainant's area the Respondent denied any liability and prayed for dismissal of the complaint. The Respondent concluded by stating that the damage was contributed by the Complainant's negligence in not protecting and switching off his appliances at night, and for extending electricity supply to the other parts of the house which was not included in the original sketch. Efforts to mediate the dispute did not yield any positive results hence the complaint was forwarded to the Division of the Authority for hearing.

2.0 Hearing Stage

During hearing which commenced on 16th September, 2015 the Complainant was represented by Mr. Vedastus Laurean, learned Advocate, while the Respondent was represented by Mr. Isdory Nkindi, learned Advocate. The following issues were framed for determination:

1. whether Complainant is the lawful owner of the premises in question;
2. whether the source of the fire in question was caused by electricity;
3. if the answer in 2 above is in the affirmative, whether the Respondent is responsible for the incident; and
4. what reliefs or remedies are the parties entitled to, if any?

During hearing, the Complainant's side called five (5) witnesses including Mr. Mussa Raphael Rukigwa himself (CW1), Mr. Elisha Hezron Mlewa (CW2), Ms. Aneth Chacha Nashon (CW3), Marko Philemon Chacha (CW4) and Amilton Chapunga (CW5). The witnesses gave their testimonies and they tendered seven exhibits (C1-C7). The admitted exhibits include, a collection of letters

from the Respondent (C1), a letter from the Respondent (C2), a letter from the Respondent dated 16th April, 2015 (C3), group letters from the Respondent ("C4"), a list of shop items (C5), photos of the scene of accident (C6), the Bank Loan and Security Agreements (C7). The Respondent on the other side did not call a witness or tendered any exhibit. The Complainant concluded by filing the 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") 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: Whether Complainant is the lawful owner of the premises in Question

This issue was discussed briefly by both counsels and the Chairman, and it was later agreed during hearing that the issue of ownership of the premises is irrelevant as the Complainant has the legal rights to bring this complaint being the owner or the tenant of the disputed premises. This is due to the fact that, the EWURA Act, Cap. 414 and GN No. 10/2013 allows any consumer, which include the Complainant to complain to EWURA where he aggrieved. Since the Complainant is the one who applied for the service and the service was provided in his name then he is entitled to bring the complaint.

Issue No.2: Whether the source of the fire in question was caused by electricity

Both parties are not in dispute with regard to the occurrence of fire incident which destroyed the Complainant's shop. The issue is whether the said fire was caused by electricity. In answering this issue we looked at the testimonies of CW1, CW2, CW3 and CW4 as well exhibit C6 and C5. All the said witnesses were present at the scene of the fire incident and they gave a similar story that fire broke out at the LUKU Meter at the Complainant's shop and damaged the meter and the lead-in-cable thereby entering the Complainant's shop via the lead-in-cable. As per the Fire Accident Report exhibit "C6" it states in the first paragraph and we quote in Kiswahili:

"Baada ya kufika tuligundua kuwa chanzo cha moto ni shoti ya umeme iliyotokana na kuongezeka ghafla kwa umeme na kupelekea mita ya duka kulipuka na kutoa moto ulioanza kusambaa katika chumba cha duka la ndugu Mussa Raphael Rukigwa".

The above statement together with the testimonies of CW1, CW3 and CW4 as well as exhibit "C4" which is a collection of photographs highly corroborate each other and points to one conclusion which is, the source of fire was due to electricity. But the final nail on the coffin is the Respondent's own statement contained in exhibit "C3". By its own words the Respondent admits in its letter which was meant to be a defence that there was indeed a fire incident which burned the Complainant's shop on the 9th February, 2015, that the source of the said fire was the failure of the neutral cable close to the transformer supplying electricity to the Complainant's area. As per exhibit "C3", the failure of the neutral cable at the transformer caused some customers connected to the said line to be affected in different ways whereby some lost their radios and security bulbs which short circuited and exploded.

We are in agreement with the submission by the Complainant that the failure of the neutral cable for whatever reasons is the cause of the fire incident. It is our considered view that the failure of the neutral cable causes power to be unstable with an uncontrollable increase in voltage levels and thus the damage of electric appliances and potential for fire outbreak. The above findings leave no question anymore as to what caused the fire that gutted down the Complainant's shop. It is our finding that the fire that destroyed the Complainant's shop was caused by electricity following an electric fault in the Respondent's infrastructure.

Issue No 3: If the answer in 2 above is in the affirmative, whether the Respondent is responsible for the incident

Since the conclusions in issues 1 and 2 above point at the Respondent's infrastructure, the only reasonable conclusion on this issue also is that the Respondent is responsible for what happened. In its defence the Respondent did not state the reasons or circumstances leading to the failure or breakage of the said neutral cable. The only defence they tried in vain to rely on was by trying to put to task the Complainant on whether they installed adequate protection measures against such incidents. It is our holding that, taking into account the nature of the mishap, even with adequate protection the likelihood for fire incident to happen was very high. Furthermore, it is our considered opinion that the failure by the Complainant to install adequate protection measures, if indeed that was the case, does not take away the responsibility of the Respondent to ensure that its customers receives power in the quality and quantity allowed.

We therefore conclude by holding the Respondent liable for the fire incident that destroyed the Complainant's shop.

Issue No.4: what reliefs or remedies are the parties entitled to, if any?

The Complainant prays for payment of compensation at the tune of TZS 20,500,000.00, being the value of shop items damaged by the electric fire, and TZS. 3,999,000.00, being the value of the electrical appliances which were destroyed by the said fire. As per the testimony of the bank loan officer (CW5) he examined the Complainant's business and satisfied himself that he had a turnover of TZS 16,000,000.00, which made him eligible for the loan of TZS 4,000,000.00. However, despite such oral testimony the Complainant produced no further documentary evidence such as receipts for purchase of items from a wholesale shop or delivery notes to prove his claims due to the fact that all of such documents were destroyed by the fire. We believe that the Complainant buys his merchandise at a known wholesale store, and thus he was able to get some documentary evidence showing his sales and deliveries.

In the absence of tangible evidence to prove the value of the said damaged items, we are left with no other option than disallowing such claims. However, as per our holding above, the Complainant has suffered loss as a result of the Respondent's negligence and thus he is entitled to some reliefs. We have considered the matter and having considered the Complainant's turnover of TZS 16,000,000 based on the evidence given by CW5 we hereby decide, to allow the payment of TZS 10,000,000.00 to the Complainant as general damages. The Complainant is also awarded the costs of this 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