

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

COMPLAINT NUMBER: EWURA/33/1/412

BETWEEN

MR. TATIANUS K. KAMOI.....COMPLAINANT

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 August, 2016, Mr. Tatianus K. Kamoi (“the Complainant”) lodged a complaint to the Energy and Water Utilities Regulatory Authority (“the Authority”) against Tanzania Electric Supply Company Limited (“TANESCO”) (“the Respondent”) on undue delay by the Respondent in connecting the Complainant with power at his house located at Kibeta (Bugezi) Area in Bukoba Municipality (“the premises”) .

The Complainant alleges that on 12th May, 2016, he paid six hundred and twenty one thousand, three hundred thirty two and ninety nine Cents (TZS 621,332.99) as a connection fee for power supply in respect of his premises. Furthermore, the Complainant alleges that he followed up the matter with the Respondent so that he could be informed when he shall be connected with power without success. The Complainant alleges that the Respondent has contravened Paragraph 3 (b) and (d) of its Client Service Charter ("the Charter"). Consequently, the Complainant claims for compensation from the Respondent amounting to TZS 96,306.61 for undue delay by the Respondent in connecting power to the premises pursuant to the Charter. Furthermore the Complainant prays for immediate connection of power to his premises.

Upon receipt of the complaint, on 19th October 2016, the Authority ordered the Respondent to file its reply to the complaint pursuant to the provisions of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, Government Notice No. 10/2013.

The Respondent generally disputed all the allegations made by the Complainant. Specifically, the Respondent alleges that on 12th May 2015, the Complainant paid for power connection fees amounting to TZS 621,332.99 and was connected with power on 10th September 2016. The Respondent argues that it took only 83 days from the time when the Complainant paid for power connection until when he was actually connected with power. The Respondent explained that according to Part 3 (c), of the Charter the Complainant was to be installed with power within ninety (90) working days. From 12th May 2016 to 10th September 2016 there were a total of 120 days, out which six (6) were Public Holidays and thirty one (31) were weekend days. In view of that the Respondent alleges that the Complainant was installed with power on the 83rd working day so he is well covered within the Charter, therefore the complaint lacks legal basis.

2.0 Hearing Stage

On 13th November 2016, the matter was called for hearing, the Complainant was represented by his wife Ms Rose Kamoi and the Respondent was represented by Engineer Simon Sulle. The following issues were framed for determination:

- (a) whether the Complainant's claim for compensation for the delay of power installation at his premises by the Respondent is justified; and
- (b) what are the reliefs to the parties, if any?

During the hearing, Ms Rose Kamoi stood as the only witness for the Complainant (CW). On the other hand Engineer Simon Sulle stood as the only witness for the Respondent (RW).

3.0 Decision

In arriving at our decision, we have considered the applicable law including the EWURA Act Cap. 414, the Electricity Act Cap 131, and the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2013 (GN No. 10/2013). We have also considered the TANESCO Client Service Charter, oral testimonies of the witnesses together with tendered evidence and closing submissions. Our decisions on the issues raised during hearing of the matter are as follows:

Issue No. 1: Whether the Complainant's claim for compensation for the delay of power installation at his premises by the Respondent is justified?

Compensations are paid to a claimant to compensate the said claimant for the loss, injury or harm suffered as a result of another's breach of duty arising from contract or tort. In all cases the complainant has a duty to prove his claims as required by the law.

In this case, the Complainant claims for compensation that has arisen from the breach of social contract between the Respondent and the Complainant. The Complainant alleges that the Respondent has violated Paragraph 3 (b) and (d) of the Charter. According to the Complainant he paid TZS 621,332.99 for power connection to his premises on 12th May 2016, but the Respondent connected power to his house on 10th September 2016 contrary to Paragraph 3(b) of the Charter, which provided for the timeline of sixty working Days for power connection. According to the Complainant, by 16th August 2016, the Respondent was in delay for 31 days hence in breach of the Charter. The Complainant therefore claims for payment of TZS 96,306.61 as compensation from the Respondent.

On its part the Respondent disputed the allegation that the matter at hand falls under Clause (b) of Paragraph 3 of the Charter instead he asserted that the matter at hand falls under Paragraph (c) of the Charter, because the Complainant's premises required a pole to be erected before power is connected to his premises. According to the Respondent Clause (b) of Paragraph 3 of the Charter, addresses situations where no pole is needed before power is connected. In view of that the Respondent connected power to the Complainant's premises within 90 working days because it was on the 83rd day when they connected the Complainant's premises and thus be in compliance with the Charter. The Respondent concluded by stating that the Complainant's claim is baseless and should be dismissed with costs.

We have evaluated the testimony of CW, together with the evidences tendered and the closing submission by the Complainant. Summing up from the facts, it is not disputed that the Complainant submitted a formal application for power connection at the premises on 12th May, 2016 and he paid the connection fee of TZS621,332.99. It is also not in dispute that the Complainant's premises were connected with power on 10th September 2016. The Authority is invited to decide on the rights and responsibilities of the parties under the Charter. From the Charter, Paragraph 3, provide for the rights and responsibilities of each party i.e. the Complainant and the Respondent. Paragraph 3 of the Charter starts by saying and we quote:

"If the customer has paid all monies owing and met all other obligations stipulated in the Service Line Form, and if, where applicable, all subsidies have been received, the following time frames shall apply for provision of supply"

The Respondent's responsibilities and liabilities in that case, arises once the Complainant has paid the connection fees in full. Paragraph 3 (a-c) set timeframes upon which the Respondent is required to connect the customer with power. The time set depends on, among other things, the distance from the customer to the existing infrastructure and voltage/ needed to build a new infrastructure. In this matter, Respondent became liable to connect power to the Complainant's premises once the connection fee was paid i.e. 12th May 2016. Whereas the Complainant alleges that the applicable Clause is Paragraph 3 (b) of the Charter the Respondent alleges that the applicable Clause is Paragraph 3 (c) of the Charter. The two referred to Clauses have different timeframes for power connection and for avoidance of doubts we quote the two Clauses verbatim:

If the customer has paid all monies owing and met all other obligations stipulated in the Service Line Form, and if, where applicable, all subsidies have been received, the following time frames shall apply for provision of supply:

(a)N/A;

(b) *Within 60 working days where lines extensions of not more than 100m (that is when the customer is located between 30m and 100m from the nearest TANESCO appropriate connective pole).*

(c) *If new networks have to be established or if High Voltage Lines extensions are required for industrial and commercial customers (that means if there is no nearby infrastructure to supply the applicant) the period for providing the supply shall be within 90 working days.*

We have examined Exhibit C1 which is a quotation letter from the Respondent and satisfied that the Complainant was within 100 meter from the existing infrastructure, therefore the applicable Clause is Paragraph 3 (b) of the Charter as claimed by the Complainant and not Paragraph 3 (c) as claimed by the Respondent. That being the case the Complainant was supposed to be connected with power within 60 working days after he has paid for the connection fees and not 90 working days as claimed by the Respondent. From the records the Complainant paid for connection fees on 12th May 2016 and was connected with power on 10th September 2016 which is equivalent to 120 days from the date of payment until he was connected with power. However the 120 days include weekend and public holidays. As per the Charter the days to be counted are "working days" as opposed to "calendar days".

In order to come up with the actual number of working days the Respondent was in delay, hence liable for compensation, we have to exclude public holidays and weekend days between 12th May 2016 and 10th September 2016. We have counted the number of days that were weekend and public holidays in that period and get a total of 37 days. Therefore if we subtract 37 days from

120 days we are remained with 83 working days. That means the Respondent connected power to the Complainant premises after 83 working days from the day when the Complainant paid for power connection. As per our earlier position that the applicable Clause is Paragraph 3 (b) of the Charter the Respondent was required to connect power to the Complainant premises within 60 working days, therefore the Respondent has delayed for 23 working days in connecting the Complainant's premises with power.

Based on the foregoing and pursuant to the Charter, our holding in the first issue is in affirmative, the Respondent is liable to compensate the Complainant for the delay in connecting power to the Complainant's premise

Issue No.2: What are the reliefs to the parties if any?

The Complainant claims for payment of compensation from the Respondent amounting to TZS 96,306.61 for undue delay by the Respondent in connecting power to the premises pursuant to the Charter. Furthermore the Complainant prays for immediate connection of power to his premises. As per our holding in the first issue the Respondent has breached Clause 3 (b) of its Charter and thus liable to compensate the Complainant for the delay in connecting power to the latter's premise.

Paragraph 3(d) of the Charter provides remedies in terms of compensation when the Respondent fails to fulfill its obligations under the Charter. It provides and we quote

"In case TANESCO fails to complete the connection and supply electricity to customer within the specified time frame, it shall pay, in cash or credit to customer account 0.066% of the monies paid by the customer per day unless..... "

In order to get the amount which the customer is entitled to be compensated by the Respondent we have to take the amount paid by the customer times the number of days the Respondent was in delay times the percentage stipulated in paragraph 3(d). (Which is TZS 621,332.99*23*0.066 = TZS 71,453.18). From the calculations the Complainant is entitled to the compensation of TZS 71,453.18 from the Respondent for the delay in connected power to his premises for 23 working days contrary to Paragraph 3(b) of the Charter. With regard to the prayer for an Order to immediate connection of power, such prayer is now overtaken by events as the Complainant is already connected with power since 10th September 2016. We also agree to award the Complainant the costs of the complaint.

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



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FELIX NGAMLAGOSI
DIRECTOR GENERAL