

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

COMPLAINT NUMBER GA.71/135/195

BETWEEN

ALFRED N. KAFANABO COMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITED..... RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 130th Ordinary Meeting held at
Dar es Salaam on the 27th day of July, 2018)*

1.0 Background Information

On 12th March, 2018, the Energy and Water Utilities Regulatory Authority ("the Authority") received a complaint from one Alfred N. Kafanabo ("the Complainant") dully represented by Kemilembe A.N. Kafanabo claiming against the Respondent to provide correct quotation of service line cost, construction of service line and payment of TZS 5,000,000.00 as consequential damages resulting from delayed connection of electricity to the Complainant's premises. The Complainant averred that he applied for the supply of electric service on 19th September, 2017 but the Respondent failed to act on the application until the time of filing this complaint despite constant follow ups.

Principally, the Complainant claims against the Respondent to provide correct quotation of service line cost, construction of service line and payment of TZS 5,000,000.00 as consequential damages resulting from delayed connection of electricity to the Complainant's premises.

Upon receipt of the complaint, the Authority required the Respondent to file the defence to the complaint in terms of Rule 5(1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, 2013. Despite receipt of the summons to file defence, the Respondent did not file the defence and provided no reason. Consequently, the Authority decided to proceed hearing the matter *ex-parte* by virtue of Rule 6(5) of the EWURA (Complaints Handling Procedure) Rules, 2013.

2.0 Hearing Stage

On the 9th July, 2018 when the matter came for hearing, the Complainant's representative one Kemilembe A.N. Kafanabo appeared in person. Before starting the hearing the following three issues were framed for determination:

- 1. whether the Complainant applied to the Respondent for connection of electricity;*
- 2. whether the Respondent properly acted on the application; and*
- 3. what reliefs the Complainant is entitled to, if any?*

The hearing of the matter was conducted on 9th July, 2018 and concluded on the same day. The Complainant's representative was the only witness on the Complainant's side and tendered various documents as exhibits. She opted not to file final submissions.

3.0 Decision

In arriving to our decision, we have considered the applicable laws which include the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 ("the Act") and the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, 2013. We have also reviewed the Respondent's Client Service Charter and considered oral testimonies of the Complainant's representative together with the exhibits tendered. Our decision on the raised issues during hearing of the matter are as follows:

Issue No. 1: Whether the Complainant applied to the Respondent for connection of electricity

In determining this issue, we evaluated the testimonies of Ms Kemilembe Kafanabo (CW) and further examined the Application and Agreement for Power Supply tendered by the Complainant and admitted as Exhibit "C1". We also examined the Quotation Note and the Complainant's letter to the Respondent dated 30th April, 2018 tendered by CW and admitted as exhibits "C2" and "C3" respectively.

It was the CW's testimony that the Complainant owns a residential house at Chanika Gogo Area in Dar es Salaam city. CW testified to the effect that on 12th September, 2017, he applied to the Respondent's Kisarawe Office for power connection by filling in Exhibit "C1" and submitted the same to the Respondent on 21st September, 2017 for further processes. From then, there were constant follow-ups which ended into empty promises by the Respondent save for the survey conducted on 29th October, 2017. Since September, 2017, nothing happened until the 23rd April, 2018 when the Complainant received a Quotation Note (Exhibit "C2") indicating the amount payable for the service line to be TZS 7,024,529.94. This quotation is strongly disputed by the Complainant on the ground that it is vague for not giving the breakdown as to what the cost constitutes. CW summed up

her evidence by stating that, it will require about nine poles to construct the line to the Complainant's premises.

We have examined all the testimonies and evidences tendered by CW and would hastily decide the first issue in the affirmative. Although the standard of proof is in the balance of probabilities even if the case is proceeding *ex parte* like this one, it is our considered opinion that the Complainant has discharged his burden of proving the case hence our decision in this issue. Exhibit "C1" indicates that the Complainant dully applied for power connection and was assigned Application No. 515317-05955. This number is similar to the one appearing in Exhibit "C2" which was issued by the Respondent. The fact that the Application Number appearing in Exhibit "C2" issued by the Respondent being similar to that appearing in Exhibit "C1" leaves no doubt that the Complainant applied for power connection as alleged. This said, we can now conclude that, the Complainant applied to the Respondent for connection of electricity.

Issue No. 2: Whether the Respondent properly acted on the application

Having decided in the affirmative on the first issue, we can only be in a position to ascertain what the Respondent is required to do upon receiving the Complainant's application by reviewing the Respondent's Client Service Charter, 2013 ("the Charter"). By virtue of Part A, Paragraph 1(c) of the Charter, the Respondent is required to provide the quotation of the cost for connecting electricity to the Complainant within 14 working days and effect construction of the service line within 90 working days after receipt of the payment as per Part A, Paragraph 3(c) of the Charter. The remaining question before us is whether the Respondent has complied with their Charter requirements..

CW testified that, the Respondent did not act on the application despite constant oral reminders and many follow ups. The application was lodged on 21st September, 2017 and the disputed quotation was issued on the 23rd

April, 2018 which is almost seven (7) months later. On 30th April, 2018 the Complainant needed some clarification regarding the quotation vide Exhibit "C3" which was received by the Respondent on the same date and there is no evidence that the Respondent acted on the said document to date. This leaves us without no other option but to hold that, the Respondent has not acted on the application by the Complainant as required by their Charter..

Issue No. 3: What relief/s the Complainant is entitled to, if any?

The two issues now being decided, our next turn is on the last issue relating to the reliefs the Complainant is entitled. The Complainant is claiming against the Respondent to provide correct quotation of service line costs, construction of service line and payment of TZS 5,000,000.00 as consequential damages resulting from delayed connection of electricity to the Complainant's premises. During hearing, the Complainant added the fourth prayer that the Respondent be ordered to provide the Compensation Agreement in terms of Regulation 4(4) of the Electricity (General) Regulations, 2011. We will be quick to point that we cannot even attempt to consider the fourth prayer because the same was not included in the pleadings served to the other party. Our decision would have been otherwise if this matter proceeded *inter-parties* for the other party to be given an opportunity to respond to the prayer. With that, we now remain with three prayers for determination.

Before we proceed to determine the prayers, it is imperative that we comments on Exhibit "C2". This is alleged to be a quotation by the Respondent. Upon its scrutiny, we observed that the same is not in the usual format used by the Respondent to communicate cost to applicants for service line and the breakdown thereof. The Exhibit just mention the amount to be paid by the Complainant. It is our considered view that, the service line, being financed by the Complainant, the quotation of the same must be detailed enough by itemizing each item and the cost thereof. Surprisingly, we find the same to lack the necessary details like the costs

for such items like the poles, conductors, taxes etc. We are therefore satisfied that Exhibit "C2" is not a proper quotation for the line to be financed by a customer.

The prayers for quotation of service line cost and construction of service line are straight forward and need not detain us. For this case, we grant these two prayers save for timeline requested by the Complainant. The Complainant prayed for an order that the Respondent should provide quotation within three (3) days and effect connection within one week after making payment of the service line. The ground for such prayer lies on the fact that it has taken months for the Respondent to act on his application hence should not be punished for the Respondent's laxity.

According to the Charter, particularly Part A, Paragraph 1(c), the Respondent was required to provide the quotation of the cost for connecting electricity to the Complainant within 14 working days and effect construction of the service line within 90 working days after receipt of the payment as per Part A, paragraph 3(c) of the Charter. It is our considered belief that the timelines prescribed in the Charter are those considered practical which the Respondent taking into account all the circumstances is able to implement. There can be some other remedies against the Respondent for failure to comply with the timelines in the Charter but not to order the shorter periods which may be impractical to implement. In the circumstances, we order the Respondent to provide proper quotation to the Complainant regarding the cost of power supply line within 14 working days and effect construction of such line within 90 working days from the date the Complainant effects payment.

Regarding prayers for TZS 5,000,000.00 as consequential damages resulting from delayed connection of electricity to the Complainant's premises, the same needs to be justified. It is important to point out that, generally, damages needs proof of loss suffered except for some cases like nominal damages which are little and awarded without detailed proof of

loss. Damages result when there is breach of duty resulting to loss. The loss needs not be tangible and may include mental disturbance. .

The CW testified that the Complainant has taken much trouble pursuing this matter and failure by the Respondent to connect him with power has denied him the pleasure of using electricity. It was further testified that, the Complainant is now using generator to supply his premises with electricity. From the facts, the Complainant applied for electricity supply in September, 2017. The Respondent was required to provide quotation of the cost within fourteen days from the date of application and thereafter effect connection within ninety days from the date the Complainant makes payment. To date, it is almost ten (10) months passed without the Respondent performing its obligation. This has caused mental disturbance and wastage of time by the Complainant in following the matter. The Respondent has a duty of supplying the electricity to Complainant if the Complainant complies with the Respondent's requirements. In this case, the Complainant has already discharged his duty but still suffers in pursuing the Respondent to perform its obligation. This entitles the Complainant to recover the damages resulting from the Respondent's breach of its duty. The question now is how much the damage is the Complainant entitled to. The Complainant has asked for TZS 5,000,000 as general damages. The reason for this prayer is that the Complainant is suffering mental disturbance in following the matter and also the cost for diesel used to fuel the generator. There is no any proof by the Complainant to justify the cost of diesel for generator. On mental disturbance and wastage of time, it is naturally that human being expects to be served within reasonable or prescribed time. This is not the case to the Complainant who has pursued the Respondent for almost a year without any progress. The Respondent has even failed to comply with its Charter. She did not even bother to file its defence on the complainant even though served.

In view of this and taking into account all the circumstances in relation to this matter, the damages prayed by the Complainant are granted to the tune of Tanzania shillings Two Million (TZS 2,000,000.000) as damages for disturbances experienced by the Complainant in pursuing this matter with the Respondent. No orders as to the cost since the same were not prayed by the Complainant.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 27th day of July 2018.


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NZINYANGWA E. MCHANY
DIRECTOR GENERAL