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

COMPLAINT NUMBER: EWURA/33/1/163/2

BETWEEN

AMIR MWAMBACOMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED..... RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 170th Extra-Ordinary Meeting
held at Dar es Salaam on the 7th day of June 2017)*

1.0 Background Information:

On 6th August, 2012, Mr. Amir Mwamba a resident of Mbezi Beach area in Dar es Salaam ("the Complainant") through the services of Advocate Mr. Said- El Maamry filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against the Tanzania Electric Supply Company (TANESCO) ("the Respondent"). The Complainant claims for payment of TZS 19,835,000.00, being compensation for the damages done to his electrical appliances following an electric fault which occurred on 5th July, 2004 at his place of business at Mbezi Beach area along Bagamoyo Road in Kinondoni District, Dar es Salaam Region. The Complainant further claims for loss of

business at the tune of TZS. 75,000.00, per day from the date of the incidence to the day of full payment and interest at the commercial rate.

The Complainant claims that at the time of the incidence, there was an electric fault, which resulted into an increase in the voltage levels supplied to his premises thus causing light bulbs to bust, and short circuiting of several electric appliances at an Internet Café business and a Bureau de Change business located at the premises. Items damaged include computers, air conditioning unit, fridge, note counter, printer, to mention a few. The incident, despite occurring during business hours and there being UPS and stabilizers it happened very sudden and the current was very high and thus almost impossible to save the damaged appliances. After the incident the Respondent's officials came and inspected the premises and promised to carry out a thorough investigation. The Complainant wrote two letters in July, 2004 to the Respondent demanding compensation. The Respondent replied in September, 2004 simply stating that they were neither responsible for the damage to the premises nor liable for compensation. No reasons were stated in the Respondent's letter. It is not clear what transpired thereafter until 2011 when the Complainant filed a Civil Case (Civil Case No.183 of 2011) at the Kisumu Resident Magistrate Court in Dar es Salaam. The said case was later referred to EWURA by the ruling of the court delivered on 8th May, 2012, hence this complaint before the Authority.

Upon receipt of the Complaint, the Authority ordered the Respondent to file a reply/defence to the Complainant's claims via a summons to file defence issued on the 24th August, 2012. The Respondent replied on 10th October, 2012 where they denied any liability and prayed for dismissal of the complaint. 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 25th May, 2015, the Complainant was represented by Mr. Said El Maamry, learned Advocate, while the Respondent was represented by Mr. Dismas Raphael, learned Advocate. The following issues were framed for determination:

1. *whether there was a powerful power fluctuation or an electric fault;*
2. *whether the said power fluctuation or electric fault, if any, resulted into damage of the Complainant's properties; and*
3. *what reliefs or remedies are the parties entitled to, if any?*

During hearing, the Complainant's side called two witnesses to testify including Mr. Amir Mwamba himself as CW1 and one Ms Luiza Mahimbu a former employee of the Complainant as CW2. These witnesses tendered five exhibits (C1-C5) which include a complaint letter dated 8th July, 2004(C1), second complaint letter dated 15th July, 2004 (C2), the reply letter from the Respondent dated 6th September, 2004 (C3), the demand note dated 29th November, 2004 (C4) and the letter from the Respondent dated 9th January, 2007(C5). On the other hand the Respondent called one witness named Aziz Bakari Chande the Respondent's Electrical Installation Inspector as RW. No exhibits were tendered by the Respondent. Both parties concluded their cases by filing final written submissions and we are very thankful for the said 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 there was a powerful power fluctuation or an electric fault

In addressing this issue we considered the testimonies of both CW1 and CW2. Both witnesses testified that there was an electric surge which came suddenly and damaged the Complainant's electrical appliances used for the business of Internet Café and Bureau de Change. CW1 and CW2 both stated that a strong electricity current came in suddenly at around 4pm on the fateful day and caused panic to customers who started running away because light bulbs were exploding and equipment were emitting smoke. CW1 and CW2 concluded by stating that on the fateful day there were no electrical problems at their area before the incident and power was stable until the incident occurred.

On the other side the only witness of the Respondent despite admitting that there was indeed an electrical fault on that material time which caused damage to the Complainant's equipment, he reiterated the Respondent's reply to the complaint that they were not responsible for the electric fault.

As pointed out earlier that, despite admitting that there was an electrical fault which led to the damage to the Complainant's property, the Respondent vehemently denied any responsibility for the electric fault. Exhibit C3 which is the Respondent's reply to the Complainant's claims state that the former is neither responsible for the loss suffered nor liable for compensation to the latter. During the testimony of CW1, he brought up the fact that on the fateful day there was a traffic accident at their area whereby a lorry hit and cut the

cables supplying electricity to the Complainant's premises. CW1 testified to the effect that he was informed by the Respondent's officers about the occurrence of the said accident. CW1 tendered exhibit C5 which is the letter from the Respondent to the Complainant's advocate dated 9th July, 2007 stating that the Respondent will not be liable because they were not the cause of the electric fault. According to the letter from the Respondent, the cause of the incident was the lorry which cut the hanging lines crossing the road, which supplied electricity to the Complainant's house and thus causing electric fault which give rise to the fire and which damaged the Complainant's properties. In the said letter exhibit C5 the Respondent claimed to have full details of the traffic accident.

Although a similar statement about the traffic accident was made by the Respondent's Witness (RW) during his examination-in-chief, the said witness failed to give descriptions or details of the accident during cross examination. RW failed to tender proof of such accident like a traffic report or photos of the scene of the accident. Furthermore it is our considered observation that the Respondent's side failed or opted not to procure the attendance of an eye witnesses to support the claim that on that fateful day there was a car accident at the area. It is against the aforementioned background we are of the view that on that fateful day there was an electric fault in the area which damaged the Complainant's properties. It is our considered opinion that the said electric fault, in the absence of any evidence to the contrary, is attributed to the Respondent's supply system.

Issue No. 2: Whether the said electric fault if any resulted into damage of the Complainant's properties

The Complainant tendered two letters exhibit C1 and C2 which are the letters containing a list of items or equipment which the Complainant claims were damaged as a result of the electric fault. C2 is an additional list of items which makes the total value of equipment damaged to be TZS 19,835, 000.00. The Respondent neither disputed nor admitted the list of items and the value. RW admitted however that upon site inspection they found some damaged equipment but could not verify each and every equipment listed in exhibit C1 and C2.

Based on the fact that the list of items were communicated to the Respondent by the Complainant and the Respondent did not comment and also based on the admission by RW that some equipment were indeed damaged by the electric fault; we are satisfied that the electric fault in the Respondent's power supply system caused damage to the electrical appliances of the Complainant.


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

The Complainant prays for compensation for the damaged electrical appliances at the amount of TZS 19,835,000.00, payment of TZS. 75,000.00, per day from the day of the incident due to loss of business and interest at commercial rate for the loss of business and an interest of 12 percent to the amount awarded from the date of Award to the date of full payment. The Respondent on the other hand prayed for the dismissal of the complaint with costs for lack of merits.

We have considered the fact that the Complainant, during hearing, submitted no proof like receipts or proforma invoices in support of the claim for the value of damaged equipment. The claim for payment of TZS 19,835,000.00, being the value of damaged equipment is in the nature of special damages, which requires strict proof before they are awarded. Awarding such claim without proof, will be tantamount to contravening the established legal principles. However, since our decisions in issue number 1 and 2 above are in favour of the Complainant and we have satisfied ourselves that, indeed the Complainant has suffered loss; he should be entitled to some reliefs. We have therefore decided to award the Complainant, as general damages, TZS 10 million for the loss he has suffered.

The Complainant shall also be paid interest at the rate of 12% from the date of this Award to the full satisfaction of the Award. With regard to the claim for payment of TZS 75,000 per day from the date of incident to the date delivery of Award due to loss of business, it is our considered opinion that the Complainant has failed to prove such claims and we accordingly disallow it. 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 7th day of June, 2017.


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EDWIN KIDIFFU
SECRETARY TO THE BOARD