

**ENERGY AND WATER UTILITIES REGULATORY AUTHORITY**

**(EWURA)**

**COMPLAINT NUMBER EWURA/33/1/90/30**

**BETWEEN**

**ANDREW P.KIDIKU ON BEHALF OF  
PASCAL D. KIDIKU..... COMPLAINANT**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY  
COMPANY LIMITED .....RESPONDENT**

---

**AWARD**

---

**(Made by the Board of Directors of EWURA at its 105<sup>th</sup> Extra Ordinary  
Board Meeting held at Dar es Salaam on the 5<sup>th</sup> day of March 2013)**

**1.0 Background Information**

On 14<sup>th</sup> June, 2011, Mr. Andrew P. Kidiku (“the Complainant”) on behalf of his son Pascal D. Kidiku 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' son with power supply at his house located at Kitunda Kibeberu area in Dar es Salaam ("the Premises").

The Complainant claims that he has been authorized by his son Pascal Kidiku to make a follow up with the Respondent, with regard to the application for power connection to the Premises. The Complainant alleges that he encountered a number of inconveniences from November 2009, when he started making follow ups with the Respondent until 8<sup>th</sup> December 2011 when he was connected with power hence, this complaint. The Complainant demanded to be paid TZS 15,114,588,941.20 being compensation for inconveniences caused by the Respondent in the course of his follow up for power connection to the Premises.

Upon receipt of the complaint, on 21<sup>st</sup> June 2011, the Authority wrote to the Respondent instructing them to present their reply to the complaint in terms of Rule 5 (1) of GN No. 30/2008. The Respondent, for reasons known to themselves, did not present a reply and thus, the Division of the Authority decided to hear the matter *ex-parte*.

## **2.0 Hearing Stage**

On 1<sup>st</sup> October 2012, the matter was called for hearing and the Complainant appeared in person. The following issues were drawn for determination;

- (a) whether the Complainant's claim for compensation for the inconveniences caused is justifiable;

- (b) whether the Respondent is liable for any inconveniences the Complainant alleged to have suffered; and
- (c) what remedies are the parties entitled to?

This matter was heard *ex-parte* and during hearing Mr. Andrew Kidiku stood as the only witness (CW) and he tendered various documents as exhibits.

### 3.0 **Decision**

In arriving at our decision, we have considered the applicable law including the EWURA Act, Cap. 414, Electricity Act, Cap 131, the EWURA (Complaints Handling Procedure) Rules, 2008 (GN No. 30/2008). We have also considered the TANESCO Client Service Charter ("the Charter"), oral testimony of the witness together with tendered evidence and closing submissions.

Before deciding on the issues raised, let us first satisfy ourselves on whether the Complainant (i.e. Mr. Andrew Kidiku) has a *locus standi* to sue on behalf of his son Mr. Pascal Kidiku. We find it pertinent for this question to be answered due to the fact that the Respondent, being the service provider, is only responsible to its customers, tenants and prospective customers in contract and to the entire world in tort. In this complaint, Mr. Andrew Kidiku is neither a customer nor a prospective customer of the Respondent as he was neither the owner nor the tenant of the premises. The Complainant's mandate to lodge this complaint on behalf of his son is contained in a letter from his son, Pascal Kidiku, dated 21<sup>st</sup> April 2011 and which was admitted as exhibit "C17".

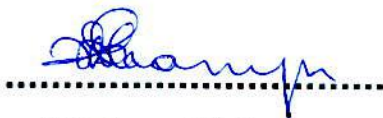


It is trite law that for someone to legally sue on behalf of the other there should be some specific legal instruments that gives the said powers to him. Such instrument can be in a form of a power of attorney, be it general or specific. We have evaluated exhibit "C17" in order to satisfy ourselves whether the same can amount to a power of attorney granted to Mr. Andrew Kidiku by his son Pascal Kidiku. It is our considered opinion that exhibit "C17" is a mere letter and thus, the same falls short of a legal power of attorney.

The importance of ensuring that someone has specific and legal instructions to sue on behalf of the other lies on the fact that, the conduct of cases/complaints carries with it some legal consequences including payment of costs in case of any eventuality. Despite the fact that the procedure of settling complaints as established under the provisions of the EWURA Act and GN No. 30/08 is *quasi-judicial* which is not bound by strict rules of procedure and evidence, it is our considered opinion that with regard to issues of locus to sue on behalf of others, the standard we use is the same as that used with other ordinary courts of law.

Based on the foregoing, it is our decision that exhibit "C17" falls short of the power of attorneys and thus, the Complainant lacks the legal mandate to complain on behalf of his son and therefore we dismiss this complaint with no order as to costs. We do not see any reason to decide on the issues framed.

**GIVEN UNDER SEAL** of Energy and Water Utilities Regulatory Authority  
(EWURA) in Dar es Salaam this 5<sup>th</sup> day of March 2013.



**Miriam Mahanyu**  
**SECRETARY TO THE BOARD**