

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

**COMPLAINT NUMBER: QN. 71/135/22**

**BRIAN ANDERSON MTUI FOR AND  
ON BEHALF OF REHEMA MTUI.....COMPLAINANT**

**VERSUS**

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

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**AWARD**

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*(Made by the Board of Directors of EWURA at its 132<sup>nd</sup> Ordinary Meeting held  
at Dodoma on the 22<sup>nd</sup> day of September, 2018*

**1.0 Background Information:**

On 21<sup>st</sup> March, 2018 Mr. Brian Anderson Mtui acting for and on behalf of Rehema Mtui ("the Complainant") who is the executrix of the estate of the late Mr. Anderson Mtui, filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The Complainants claim for cancellation of a utility debt owed to the Respondent amounting to TZS 5,704,901.78 and cessation of deductions of payments on their LUKU purchases for satisfaction of the said debt.

The Complainant who is a resident of Soweto Street in Arusha City states that he runs a bar, restaurant and lodge business by the name of Florida along Soweto Street. The Complainant further states that he has been a customer of the Respondent for many years and has always purchased his electricity through LUKU purchases. In February, 2018 his meter was blocked so he

could not purchase electricity. The Complainant further claims that he went to the Respondent's office to inquire about the matter and was told that the meter was not blocked but a debt of the sum of TZS 5,704,901.78 was credited to his LUKU account as a supplementary bill. The Complainant further claims that he was told by the Respondent that the said bill was a result of the meter test conducted at the Complainant's premises in October, 2017 which showed that 30% of electricity consumed by the Complainant was not metered due to faulty meter. Further to that the Complainant states that in order to restore the service he was obliged to pay the sum of TZS 237,700.00 which he paid under protest. Ultimately the Complainant filed this complaint to the Authority in March, 2018.

Upon receipt of the Complaint, the Authority ordered the Respondent to file a reply/defence to the Complainant's claims via the summons to file defence issued on 23<sup>rd</sup> March, 2018. The Respondent replied on 9<sup>th</sup> April, 2018 and stated that the disputed debt owed by the Complainant is a lawful debt. The Respondent stated that on 12<sup>th</sup> October, 2017 its inspectors went to the Complainant's premises for the purposes of inspecting the Complainant's meter with No.04140678840. The Respondent further stated that in the course of inspection it was discovered that the Complainant's meter had a faulty which allowed one phase to pass through unmetered. According to the Respondent the Complainant's meter was a three phase meter and its load was balanced for all three phases which meant if one phase was not being metered only two third was being metered. After the inspection, the Respondent states that they prepared revenue recovery and computed the amount to be recovered which is the sum of TZS 5,704,901.78. The Respondent added that following the tests, the Complainant's meter was changed in January, 2018. The Respondent concluded with a prayer that the complaint should be dismissed and the Complainant be ordered to pay the supplementary bill.

Efforts to resolve the dispute through mediation did not succeed thus; the matter was referred to the Division of the Authority for hearing.

## 2.0 **Hearing Stage:**

During hearing which was held on 26<sup>th</sup> and 27<sup>th</sup> July, 2018, the Complainant appeared with his advocate Miss Consolata Kaiza whereas the Respondent was represented by Mr. Karonda Kibamba, learned advocate and the Principal Legal Officer of the Respondent in charge of the Northern Zone. The following issues were framed for determination:

- 1) *Whether the amount claimed by the Respondent as Revenue Recovery to the tune of TZS 5,704,902.00 was correctly computed; and*
- 2) *What are the remedies available?*

At the hearing the Complainant stood as the only Complainant's witness "CW" and tendered two exhibits namely the letter dated 4<sup>th</sup> April, 2018 addressed to the Authority applying for an order to stop deductions from LUKU purchases as exhibit "C1", the reply letter from the Respondent dated 28<sup>th</sup> July, 2017 as exhibit "C2". The Respondent on the other side had two witnesses one Ms Fatma Bouede the Regional Revenue Protection Supervisor as "RW1" and Eng. Hassan Juma the Regional Revenue Protection Engineer as "RW2". The said witnesses tendered a Meter audit report which was admitted as Exhibit "R1" purchase history was admitted as Exhibit "R2", Annual Purchase History and Graphs admitted as Exhibit "R3" Recovery Computation Notice dated 21st Oct 2017 admitted as Exhibit "R4", and a copy of Dispatch admitted as Exhibit "R5".

## 3.0 **The Decision:**

In arriving at the decision, the Authority has considered the applicable laws which include the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 ("the Act"), the EWURA (Complaints Handling Procedure) Rules, Government Notice Number 10 of 2011, The Electricity (Supply Services) Rules, GN No. 4/2017 and the Electricity (General) Regulations GN No. 63/2011. The Authority has also considered the oral testimony of the witnesses together



with documentary evidence tendered during the proceedings as well as The decision on the issues raised is as follows:

1) ***Whether the amount claimed by the Respondent as Revenue Recovery to the tune of TZS 5,704,902 was correctly computed***

The Complainant's witness (CW) testified that he is interested in building a good relationship with the Respondent and in that regard he was no longer opposed to the supplementary bill except that he was looking for leniency. CW further stated that he acknowledges the fact that his meter was defective but he was not satisfied with the correctness of the computation of the amount to be recovered. In that regard he had submitted an offer to pay TZS 3,500,000.00 to discharge the entire debt but his offer had been turned down by the Respondent. CW further stated that he has already paid TZS 900,000.00 and he continues to pay TZS 237,700.00 monthly as a condition for him to use the service. CW stated that he was therefore looking forward for either a review of the computation or leniency to reduce the debt to the amount equivalent to his offer.

The second Respondent's witness (RW2) who is the Regional Revenue Recovery Engineer testified that he computed the revenue to be recovered from the Complainant as shown in exhibit R4. RW2 further stated that his computation was based on the consumption history of the Complainant and covered a period of twenty four months as prescribed in the law. RW2 explained further that since the Complainant's meter was a three phase and since his load was balanced on all phases that meant each phase had 33.3% of the entire load. RW2 further stated that since only one phase was not metered that means 33.3% of the electricity consumed by the Complainant was not paid for, for the past two years. In other words 66.7% was metered and paid for. RW2 stated that in order to establish the amount of electricity unpaid for, he used the purchase history of the Complainant and divided the total in two to get the one third ( $\frac{1}{3}$ ) which is what the Respondent claims. In this regard exhibit R2 the Complainant's purchase history covering the

period from January, 2012 to December, 2017 and exhibit R3 the annual purchase history and graphs were instrumental.

The Authority has considered the methodology used by the Respondent's witness in computing the amount to be recovered in the light of the law as set out below. The right of the Respondent to prepare and issue supplementary bills to her customers is derived from the provisions of the Electricity (Supply Services) Rules, GN No. 4/2017, which states in Rule 51 as thus:

51. (1) *"A licensee shall be allowed to prepare supplementary bills where:*

*(a) the results in rule 50 have indicated that there were some errors in preparation of bills or the meter has malfunctioned and a customer has agreed in writing on such errors or malfunctioning; or*

*(b) ..... N/A*

*(2) Notwithstanding the provisions of sub-rule (1) a supplementary bill to be prepared by a licensee pursuant to sub-rule (1) shall not exceed a period of:*

*(a) ..... N/A*

*(b) twenty-four months counted from the date of last inspection, for other customers".*

A similar but somehow inconsistent provision is provided under Regulation 12 (1) of the Electricity (General) Regulations GN No. 63/2011 provides;

12. (1) *"Where a meter used to register the quantity of electrical energy supplied by the licensee to any customer is found to be defective through no fault of the licensee or customer, the licensee may in consultation with the customer, determine the reasonable quantity of electrical energy supplied and recalculate the charges due to or from the customer as appropriate for up to a maximum period of twelve months from the date the meter is established to be defective.....".*

What is common between the two provisions is the right to issue supplementary bill where a meter has malfunctioned. However, we noted a serious inconsistent between the Regulation and the Rules in regard to the period of recovery. The Rules provide that the period of recovery shall be twenty four months whereas the Regulation says twelve months.

Generally we did not see fault in the methodology used in computation of the revenue to be recovered save for the period of recovery. In a quest to resolve this conflict of laws we resorted to the Interpretation of Laws, Cap.1. Although under the interpretation section of Cap.1 both Regulations and Rules are subsidiary laws made under the Act of Parliament, it is certainly that one of them must be superior to the other. Unfortunately we could not find a provision under the Cap.1 which resolves the conflict between a Regulation and a Rule. We further considered the provisions of Section 37 of the EWURA Act, Cap.414 which provides that:

*37(1) "subject to sub-section (2), where there is any inconsistency between the provisions of this Act and the sector Act, the provisions of the sector Act shall prevail and this Act shall be read down to the extent of the inconsistency".*

We are of the view that this rule above should apply by analogy to Rules made by the Authority in the sense that where any provision of the Rules is inconsistent with provisions of the Regulations; the Rules should be read down to the extent of the inconsistency. In this case the provisions of rule 51(2)(b) of GN.4/2017 are inconsistent with those of Regulation 12(1) of GN. 63/2011. We are therefore of the view that the provisions of the rule should be read down to that of the regulations to the extent of the inconsistent. In that regard the recovery period would therefore be as prescribed under the Regulation which is twelve months.



The Respondent has used the provisions of Rule 51(2) (b) of GN.4/2017 in making the computation which means the recovery period under the computation was twenty four months. Under the said computation the Respondent came up with the sum of TZS 5,704,902.00 as revenue to be recovered from the Complainant. However, and based on the analysis we made above, we are of the view that the proper computation ought to have been done under GN No. 63/2011 and not under GN No. 4/2017.

2) ***What are the remedies available?***

The Complainant initially prayed for an order for total cancellation of the debt and cessation of deductions on his LUKU purchases. However, at the hearing he seemed to have altered his prayers to one of asking for leniency from the Respondent only. The Respondent on the other hand prayed for dismissal of the Complaint and an order for the Complainant to pay the bill.

Based on the findings above we hereby partly allow the complaint by ordering that the computed recovery amount of TZS 5,704,902.00 be and is hereby reduced by one half to cover the period of twelve months only as prescribed under GN No. 63/2011. The supplementary bill to be paid by the Complainant is reduced to TZS 2,852,451.00. Each party shall bear its own cost of the complaint.

**GIVEN UNDER SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 22<sup>nd</sup> day of September, 2018.

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**NZINYANGWA E. MCHANY**  
**DIRECTOR GENERAL**