

**THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY**

**(EWURA)**

**COMPLAINT NUMBER EWURA/33/1/204**

**BETWEEN**

**BAKARI SHINGO ..... 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 105<sup>th</sup> Ordinary Meeting held at Dar es Salaam on the 10<sup>th</sup> day of February 2016)**

**1.0 Background Information**

On 19<sup>th</sup> March 2013, the Energy and Water Utilities Regulatory Authority ("the Authority") received a complaint from Mr. Bakari Shingo ("the Complainant") complaining about a fire that destroyed part of his commercial building located at Gongolamboto in Dar es Salaam City ("the Premises"). The complained fire is alleged to be a result of an electric fault caused by the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The Complainant alleges that the Respondent is responsible for the fire accident due to the fact that the neutral wire in the premises was completely burnt and detached from the bracket. The Complainant alleges that there was no problem with his switches and that

the problem was caused by the failure by the Respondent to put a clamp between the aluminum and copper wires at the bracket. The Complainant further alleges that frequent power fluctuations and lack of proper connector was the source of fire that destroyed part of the premises.

Consequently, the Complainant claims from the Respondent for the following:

- (a) an Order for payment of TZS 3,060,000.00 being compensation for the damaged items;
- (b) an Order for payment of TZS 1,500,000.00 being general damages; and
- (c) an Order compelling the Respondent to use proper connectors on its supply system.

Upon receipt of the complaint, on 27<sup>th</sup> March 2013, the Authority wrote to the Respondent instructing them to present their reply to the complaint in accordance with Rule 5 (1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling and Settlement Procedures) Rules, GN No. 10/2013. The Respondent failed to submit their defence as required by law. The matter was therefore referred to the Division of the Authority on 24<sup>th</sup> April 2015, for *ex parte* hearing.

## **2.0 Hearing Stage**

On 24<sup>th</sup> April 2015, when the matter came for *ex-parte* hearing, the Complainant represented himself. During hearing the following issues were framed for determination:

1. what was the source of fire;
2. whether the Respondent is responsible for the fire accident; and

3. whether the Complainant suffered damage as a result of the fire accident; and
4. what reliefs, if any, are the parties entitled to?

The hearing of the matter took place on 24<sup>th</sup> April, 2015 and 3<sup>rd</sup> October, 2015. We are very thankful for the submissions made by the Complainant.

During hearing the Complainant, Mr. Bakari Shingo stood as the first witness (CW1), Ms Zabra Abushekhe the Complainant's employee stood as the second witness (CW2), Mr. Msekwa Juma the Complainant's employee stood as the third witness (CW3), Mr. Adam Guli Kazizi a businessman stood as the fourth witness (CW4), Mr Hussein Bakari Mgozi a businessman stood as the fifth witness (CW5) and Mr. Abdulrahman Mussa Lutenga stood as the sixth witness (CW6). The witnesses tendered various documents as exhibits.

### 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 and Settlement Procedures) Rules, GN No. 10/2013. We have also considered oral testimonies of witnesses together with the exhibits and good electricity industry practices. Our decisions on the issues raised during hearing of the matter are as follows:

#### **Issue No. 1: What was the cause of fire**

It is not in dispute that the premises caught fire on the afternoon of 20<sup>th</sup> October 2011 and that same were partly destroyed by the said fire. It is also not in dispute that the Complainant arrived at the premises after the fire accident. The Complainant (CW1) testified that on 20<sup>th</sup> October, 2011 around 3 pm, while in Segerea about 10 kilometers from the premises, he



received a telephone call informing him about the fire incident at his premises. CW1 testified that the Respondent is responsible for the fire accident due to the fact that the neutral wire at the premises was completely burnt and detached from the bracket. CW1 testified that there was no problem with his switches and that the problem was caused by failure by the Respondent to put a clamp between aluminum and copper wires at the bracket. CW1 testified that several other customers of the Respondent did not have clamps to protect the Respondent's supply system. CW1 further testified that frequent power fluctuations and lack of proper connector was the source of fire that destroyed part of the premises.

CW2 testified that he was in front of the premises when the accident happened. CW2 testified that he saw fire on the first floor and that there was a mattress and a wooden door on the first floor which caught fire. CW2 testified that as a result of the fire outbreak it destroyed other items such as computers, telephones and reams of papers. CW2 further testified that he did not see when the fire started and did not inquire on the source of the fire.

CW3 testified that they were working in the office on the ground floor on the fateful date when they heard someone knocking on their door shouting that they should get out as there was fire. CW3 testified that the fire was eventually controlled but all items on the first floor were destroyed. CW3 testified that there were no power problems on that fateful day. CW3 further testified that he did not see sparks falling from the bracket but he was told by someone else that sparks fell on the mattress. CW3 testified that as a result of the fire the wire broke from the bracket and fell down. CW3 testified that the machines at the office did not misbehave prior to the fire accident. He further testified that he heard a circuit breaker tripping, however, his boss (the Complainant) was informed about the tripping when the fire broke.

CW4 testified that he was working at his store and he heard people outside screaming fire! fire! He testified that he went outside and saw fire at the bracket that had already spread to the major parts of the upper floor of the premises and the mattress and few other things were burning. CW5 testified that he was on his way to the premises when he looked up and saw smoke and then fire at the top of the Complainant's business building. CW5 testified that the front door was burning and at the end of the wire there was a window where the fire was burning.

CW6 testified that he saw sparks at the pole distributing power to the premises and then he saw smoke. He testified that he ran to inform the residents and they helped put off the fire.

We have examined all the testimonies and evidences tendered by the Complainant. Normally the source of fire can be established either by eye witness (direct evidence), circumstantial evidence or expert evidence. It is important to note that in this matter the, by the time of hearing, the *locus in quo* has been changed and some of the evidence is therefore lost. Furthermore, there is no expert who was called to investigate on the cause of the fire and thus not able to get the expert testimony. As a result in this case, we relied on circumstantial evidence to prove the source of fire. We examined the testimonies of "CW3", "CW4", "CW5" and "CW6" who alleged to have seen fire coming from the top of the premises on the bracket side. We also examined the site visit report which is part of the proceedings prepared after the completion of the hearing.

CW3 testified that he was informed by young men at a nearby carwash that they saw sparks coming from the bracket and fell on the mattress. On the face of it CW3's testimony is hearsay and cannot be relied upon to determine the source of fire unless it is corroborated. We have also considered the fact that the incident occurred at 3 pm and given the time that the fact that it occurred in the busy area with a lot of people around, the said fire could have well been controlled and stopped from spreading



had it started from outside of the building. Fire could have been stopped before even reaching the balcony door. The fact that all items inside the first floor were destroyed, suggests that fire likely started from within the first floor and not outside.

CW4 testified that he saw fire at the bracket that had already spread to the house. CW4 testified that he heard people screaming while he was working at his store and after hearing the scream is when he decided to go outside. CW4's testimony cannot be relied on to determine the source of fire as it suggests that he arrived at the scene when fire had already spread to the house. Although he might have been among the first people to arrive at the scene, his testimony does not help us in determining the source of fire.

CW5 testified that he saw smoke and then fire at the top of the Complainant's house. He testified that the door at the front was burning and at the end of the wire there was a window where fire was burning. CW5's testimony indicates that fire started on the top of the house; however, it does not explain the source of fire. CW6 testified that he saw sparks at the pole distributing power to the premises and then he saw smoke. However, CW6 failed to relate the sparks at the pole and the fire that partly destroyed the premises. It is our considered opinion that the evidences given by CW3, CW4, CW5 and CW5 are sketchy, contradictory and not strong enough to determine the possible source of fire. Additionally, while the Complainant alleges that fire was caused by frequent power fluctuations and failure by the Respondent to put clamps i.e. proper connector between aluminum and copper wires at the bracket, he has failed to adduce evidence to substantiate his claims.

Based on the foregoing and in the final analysis and considering all the circumstances, we are of the view that the Complainant has failed to discharge the burden of proof, on the balance of probabilities, that the source of fire was an electric fault caused by the Respondent.

**Issue No. 2: Whether the Respondent was Responsible for the fire accident?**

It is our findings under issue number one that the Complainant has failed to prove on the balance of probabilities that the source of fire is an electric fault caused by the Respondent. Since the onus of proof lies on the person who alleges certain facts to exist and since in this case the Complainant failed to prove his own allegation, it is our decision that the Respondent is not responsible for the fire accident.

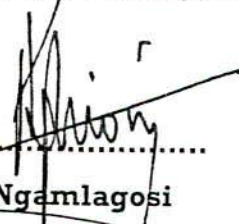
**Issue No. 3: Whether the Complainant suffered damage as a result of the fire accident?**

As stated above it is not disputed that the Complainant's house was partly destroyed by fire on 20<sup>th</sup> October 2011 and thus he suffered loss. However, as we held in issue number one and two it is our considered view that the Respondent is not responsible for the loss suffered by the Complainant after the latter has failed to discharge the burden of proof that the Respondent was responsible for causing the fire that destroyed the house.

**Issue No. 4: What reliefs are the parties entitled to?**

Based on the foregoing it is our decision that the complaint be and is hereby dismissed and each party shall bear its own costs.

**GIVEN UNDER SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 10<sup>th</sup> day of February, 2016.

  
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**Felix Ngamlagosi**  
**DIRECTOR GENERAL**