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

COMPLAINT NUMBER: GA.71/135/207

CLAUDIA ANDREA MALINZI.....COMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED..... RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 133rd Ordinary Meeting held at
Dar es Salaam on the 30th day of October, 2018*

1.0 Background Information:

On 19th March, 2018 Claudia Andrea Malinzi ("the Complainant") a resident of Anyama-Kibeta Area within Bukoba Municipality in Kagera Region filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent") disputing a supplementary bill of TZS 1,855,090.72 issued by the Respondent.

The Complainant seeks an order of the Authority to cancel a utility debt owed to the Respondent amounting to TZS 1,855,090.72 as a supplementary bill, and restoration of electricity supply service to her premises. The Complainant alleges that on 5th March, 2018 electricity supply service at her residence was suspended. She went to the Respondent's office to inquire about it where she was issued a letter dated 13th January, 2018 demanding payment of the said sum of TZS 1,855,090.72 as a supplementary bill issued in relation to energy consumed but unaccounted for due to meter malfunctioning. The Complainant further states

that she was shocked to hear that because as a LUKU meter user she has always purchased electricity for use.

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 20th March, 2018. The Respondent replied on 3rd April, 2018 and stated that the Complainant's meter was inspected on 17th November, 2017 and was found to be defective. Following that discovery the Respondent prepared a supplementary bill in accordance with The Electricity (Supply Services) Rules, GN No. 4/2017. The Respondent confirmed that the Complainant was issued with a supplementary bill of the sum of TZS 1,855,090.72 as energy charge for electricity consumed for twenty four months counted backwards from October, 2017. The Respondent concluded by asking the Authority to dismiss the Complaint and order the Complainant to pay the 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 11th and 12th June, 2018, the Complainant appeared with her advocate Mr. Stephen Byabato whereas the Respondent was represented by Eng. Jackson Kamuli, a principal officer of the Respondent in charge of the Revenue Protection Unit for Kagera Region. The following issues were framed for determination:

- 2.1 Whether the Complainant's Meter was defective;*
- 2.2 Whether the amount claimed by the Respondent to the tune of TZS 1,855,090.72 is lawful and correct amount;*
- 2.3 What remedies, if any are the parties entitled to.*

At the hearing the Complainant stood as the only Complainant's witness "CW" and tendered Customer Statement for the period between August, 2013 and April, 2018 which was admitted exhibit C1, a letter dated 13th

January, 2018 and its admitted as Exhibit "C2, the letter to TANESCO objecting the calculation of the debt admitted as Exhibit" C3", and one receipt for payment of TZS 154,000.00 to the Respondent admitted as Exhibit" C4".

On the other hand the Respondent called two witnesses "RW1" Ally Maulid Ndawaine an Artisan, and RW2 Eng. Jackson Peter Kamuli, the Regional Revenue Protection Engineer. They also tendered Meter Audit Form and Admission Form which were admitted as Exhibit "R1 (a) and (b)" respectively as well as a notification of claim of recovery of TZS 1,855,090.72 admitted as Exhibit "R2".

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:

3.1 *Whether the Complainant's Meter was defective;*

The Complainant testified that she used to buy electricity once after several months such as two or three months. This is because she said she is low consumer and does not have a large family. She further stated that on 5th March, 2018 she observed that she could not purchase electricity. She therefore visited the Respondent's office for clarification. On arrival to the Respondent's office she was handed a letter dated 30th January, 2018 (exhibit C2) in which the Respondent stated that following a meter inspection conducted on 17th November, 2017 the Complainant's meter was found to be defective and thus allowing electricity to flow unmetered.

In that regard the Complainant was asked to pay the sum of TZS 1,855,090.72 as a supplementary bill for energy used for the past twenty four months. CW1 continued that she tried to protest the findings and the bill but to no avail as a result she ended up paying on protest instalments of TZS 154,000 per month from May, 2018 to have the service restored.

On the other hand, the Respondent's witness particularly RW1 an Artisan who conducted the meter audit inspection testified that he arrived on the Complainant's premises on 17th November, 2017 and conducted inspection on the meter in the presence of the Complainant's house maid who is said to be above 18 years old and the Complainant's mother an old lady. RW1 tendered a meter audit and admission form as evidence of the findings on his inspection and an admission thereto which were admitted as exhibit R1 (a) and (b).

In our final analysis we have considered the law in relation to meter inspections particularly the Electricity (General) Regulations GN. No.63 of 2011 and Electricity (Supply Services) Rules GN. No. 4 of 2017. Regulation 11 of GN. No.63/2011 gives mandate to the licensee to have access to and conduct among others inspection, or replacement of a meter. A Similar right and mandate is restated under Rule 49 of GN. No. 4 which in wider terms sets out the procedure for meter inspection and under sub-rule (3) it provides:

(3) "Meter inspection exercise shall be witnessed by a customer or, in his absence, any adult relative or friend, local government leaders of the respective area or police officers".

A point was raised by the Complainant's Counsel in cross examination with regard to the violation of inspection procedure for failure to have the inspection witnessed by a local leader. The Respondent's Witness (RW1) although admitted on cross examination that no local leader witnessed the inspection, he insisted that the Complainant's representative was above 18 years and of sound mind and therefore was competent to witness the inspection. The Complainant counsel's questions and final submission

intends to discredit the inspection findings on the premise that the exercise was not witnessed by a local leader. We are of the view that the learned counsel wrongly interpreted the provision of sub-rule 3 above. The requirement for a witness is not *cumulative* but in *alternative*. This means the first opportunity is given to the customer and in his/her absence his or her representative and in case there is no representative then a local leader and in case there is no local leader then a police officer may witness the inspection. The rule does not require all of them to be present at one time. We are satisfied in this case that the Complainant's representative whom we had a chance to meet during site visit is a girl of majority and of sufficient intelligence and therefore she was a competent person to witness the inspection.

We have further considered the inspection findings that the Complainant's meter had malfunctioned and was allowing electricity to flow unmetered in relation to the testimony of RW2 and exhibit R2 and its annexures. Initially RW1 stated that the Complainant had not purchased electricity for a long period of time. Later on RW2 stated that Complainant had not purchased electricity for two years from November, 2015 to November, 2017 when the meter was inspected. We further requested for transactional records of the faulty meter as well as a statement of a meter used prior to the defective meter. This information was supplied and it was clear that there was no transactional record of the now defective meter for three months of year 2015, and the whole of 2016 and 2017. The Complainant although acknowledges that she did not purchase electricity during the period between November, 2015 and November, 2017 she insists that it is because she believes she had electrical units in the meter and therefore she could have bought if they were finished. Unfortunately, we do not buy into the Complainant's Defence. Considering her historical purchases which shows that she purchased electricity at least four times a year, we are of the view that the period of two years is too long for her not to have purchased electricity. The circumstances are such that one is likely to believe that the meter must have malfunctioned with or without knowledge of the Customer

(Complainant). It is further our view that, since the Complainant's representative signed the admission form and the Complainant did not contest the findings of the inspection at the earliest possible time. She cannot do so at the hearing stage. In fact she alternatively stated in her testimony that if at all the meter was defective then a computation of the recoverable amount based on her actual consumption should be done. Be it as it may we are convinced by the evidence adduced that the meter had malfunctioned.

Whether the amount claimed by the Respondent to the tune of TZS 1,855,090.72 is lawful and correct amount;

The Complainant stated in her testimony that she was handed a letter dated 30th January, 2018 showing that she owes the Respondent the sum of TZS 1,855,090.72 as energy charge for electricity consumed over twenty-four months backward. She disputed the amount stating that the same is over stated and out of touch with her actual consumption. On the other hand, RW2 who made the computations and tendered exhibit R2 and its annexures stated that he used the customer's load to compute the recoverable amount for the period of twenty four months as provided for under rule 51 of GN. NO.4/2017. When asked why he did not use historical purchase record of the customer he said since the meter was defective for the period of more than twenty four months the customer must have known and therefore adjusted her consumption downwards. It would not therefore be viable to use the historical approach.

The Authority has considered the methodology used by the Respondent's witness (RW2) 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:

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 which 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.

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. 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 which means the period of recovery ought to be twelve months only.

Another part of this issue lies in the methodology which RW2 adopted in the computation. It is evident from the annexures of R2 that the computation was based on the customer's load installed capacity. In this computation the average consumption of the Complainant was said to be 219.46 kWh per month. Although regulation 8 (1) (b) provides that in establishing revenue loss the licensee is empowered to use either consumption trend or installed capacity; we are of the view that since the damage or fault of the meter was not by an intentional act of the Complainant, then it would be

highly prejudicial to use the installed capacity approach as it tends to punish the customer. As pointed out above the Respondent's computation showed that the average consumption of the Complainant was 219.46kWh per month. However, a computation made by the Authority based on the consumption trend of the Complainant shows that the Complainant's highest ever monthly average consumption was 112.58 kWh for the year 2012. For the year 2010 it was 69kWh, 2011 was 73.67kWh, and 2013 it was 63.66kWh. Based on the foregoing it is therefore hereby stated that the period of recovery of lost revenue due to meter malfunction shall not exceed twelve months based on the customer's consumption trend. In that regard the Complainant is liable to pay the sum of TZS 302,377.00 only. This amount includes energy charge, EWURA and REA levy, and VAT.

3.2 *What remedies, if any are the parties entitled to.*

The Complainant prays for an order to cancel the supplementary bill or alternatively to re-compute the same based on her actual consumption. On the other hand, the Respondent prays for dismissal of the complaint and an order compelling the Complainant to pay off the bill.

Based on the foregoing we hereby partly allow the complaint and order that the Complainant should pay to the Respondent the sum of TZS 302,377.00 as revenue for energy consumed but unmetered during the period when the meter had malfunctioned. The Respondent is also ordered to ensure that the Complainant is placed in tariff category D1 where she qualifies to be since 2012. If by any reason the Complainant has paid any monies to the Respondent in excess to the supplementary bill she will be entitled to a refund in either cash or token of electricity as she (the Complainant) may wish. Each party shall bear its own cost of the complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dar es Salaam this 30th day of October, 2018.



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NZINYANGWA E. MCHANY
DIRECTOR GENERAL