

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

COMPLAINT NUMBER: EWURA/33/1/435

BETWEEN

GRACE NDUNGURU.....COMPLAINANT

VERSUS

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

AWARD

*(Made by the Board of Directors of EWURA at its 168th Extra Ordinary Meeting
held at Dar es Salaam on the 10th day of March 2017)*

1.0 Background Information

On 1st November, 2016, Ms Grace Ndunguru through her representative Mr. Peter Ndunguru("the Complainant") lodged a complaint to the Energy and Water Utilities Regulatory Authority ("the Authority") against Tanzania Electric Supply Company Limited ("TANESCO") ("the Respondent"). The Complainant's claim is on disputed electricity bills related to electricity services at her premises located at Mbagala Charambe-Nzasa Area in Dar es Salaam.

The Complainant alleges that on 1st August 2014, she reported to the Respondent's offices located at Mivinjeni Kurasini Area on the malfunctioning meter at her premises and she was issued with the Technical Breakdown (TB) Number 247520. The Complainant claims that the Respondent's officials informed her that it is the Respondent's responsibility to replace the defective meter without any additional costs to the Complainant. Furthermore the Respondent assured the Complainant that she should not be troubled with the matter, as the Respondent will take care of it. Furthermore the Complainant stated she made constant close follow up on the matter even after the Respondent had opened a nearby office at Mbagala Area. The Complainant submitted to the Respondent's Mbagala offices the TB number issued by the Respondent's office at Mivinjeni Kurasini for them to take action but nothing happened.

After following up the matter with the Respondent since 2014, in October 2016 the Complainant's conventional meter was replaced with a LUKU meter. The Respondent informed the Complainant through a letter that she is indebted TZS 651,504.52 as the cost of revenue loss due to unmetered energy during the period of meter defectiveness. The Complainant disputed the said debt because the same has arisen due to the Respondent's own negligence for failure to act in time by replacing the defective meter after the Complainant had reported the matter in 2014.

The Complainant concluded by stating that, this matter has brought a lot of inconvenience to her and she prays for an order from EWURA to compel the Respondent to show analysis and the breakdown of the said debt of TZS 651,504.52 and give explanation on their failure to take immediate action since the Complainant reported the matter to their office.

Upon receipt of the complaint, on 3rd November 2016, the Authority ordered the Respondent to file a reply to the complaint pursuant to the provisions of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, Government Notice No. 10/2013. On 21st November 2016, the Respondent, filed its defense and disputed the allegations made by the Complainant. The Respondent alleges that on 1st October 2016, the Complainant reported the malfunction of her meter and was given TB number 247520. Following the reporting by the Complainant, the Respondent's officials visited the Complainant's premises and confirmed that the Complainant's meter was defective, however, due to shortage of meters at their store, the Respondent was unable to replace the Complainant's meter immediately.

On 28th September 2016, the Respondent conducted meter audit at the Complainant premises and thereafter replaced the malfunctioning meter. The Respondent further stated that upon replacement of meter, calculations were made and the Complainant was informed that he was indebted TZS 651,504.52 as the lost revenue during the entire time the Complainant was consuming electricity without being charged. The Respondent alleges that the stated amount does not include costs for meter distraction and costs for investigation because the Respondent is aware that the Complainant is not responsible for the malfunctioning of the meter.

The Respondent concluded its defense by stating that since the Complainant consumed the electricity throughout the period when his meter was defective, the Complainant is liable to pay for energy consumed. The mere fact that his meter was defective does not preclude him from his liability to pay. Therefore the Respondent prays against the Complainant for payment of the debt amounting to TZS 651,504.52 and any other remedies that the Authority may deem fit and appropriate to grant.

2.0 Hearing Stage

On 18th January 2017, the matter was called for hearing and the Complainant was represented by her son Mr. Peter Ndunguru, while the Respondent was represented by Ms Farida Sued, learned advocate. The following issues were framed for determination:

- (a) whether the Complainant is liable to pay the disputed bill amounting to TZS 651,504.52; and
- (b) what are the remedies to the parties, if any?

During the hearing, Mr. Peter Ndunguru stood as the first witness for the Complainant (CW1) and Mr. Tyson Ndunguru stood as the second witness for the Complainant (CW2). On the other hand Mr. Deusdedit Hokororo, a Respondent's Customer Relations Officer stood as the only witness for the Respondent (RW).

3.0 Decision

In arriving at our decision, we have considered the applicable law including the EWURA Act Cap. 414, the Electricity Act Cap 131, the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2013 (GN No. 10/2013) and TANESCO Client Service Charter (the "Charter"). We have also considered the Electricity (General) Regulations G.N. No.63 of 2011, oral testimony of the witnesses together with the tendered evidence and closing submissions of the Respondent. Our decisions on the issues raised during hearing of the matter are as follows:

Issue No. 1: Whether the complainant is liable to pay the disputed bill amounting to TZS 651,504.52

It is trite law that he who alleges must prove and in this matter the Complainant is duty bound to prove, on the balance of probabilities, that the claim by the Respondent of TZS 651,504.52 is unjustifiable. From the evidence adduced, and testimonies of the witnesses it is not disputed that the Complainant reported to the Respondent about the malfunctioning of her meter on 1st August 2014 and the said meter was replaced by the Respondent in September 2016. We were convinced by the testimony of CW1 that apart from reporting the malfunctioning of the meter to the Respondent's official first at Kurasini Mivinjeni offices and later on to Mbagala offices but he also made a close follow up physically and through mobile calls. As per the Complainant, despite her efforts in following up the matter, she received little or no cooperation from the Respondent instead she was given simple answers that the meter belongs to TANESCO so he should not be concerned.

The Respondent has a duty to communicate with its customer when they detect or discover any malfunction of the meter and have a duty to replace any defective meter. This obligation is provided for under Rule 41 of the Electricity (Supply Services) Rules of 2013. Rule 41(1) provides that a licensee (by licensee here we refer to the Respondent) shall take all reasonable steps to detect and prevent damage to or fault in electrical plant, electricity meter or any equipment for provision of supply services in the service area. The Respondent had a duty under the law to act immediately after the Complainant had reported the malfunctioning of its meter. However, in this matter we are wondering as to why it took the Respondent about two years to replace the defective meter from the Complainant premises. If the Complainant had no meter in its store, the Respondent had a duty to inform the Complainant and took necessary step to purchase the meter and replace

the Complainant's malfunctioning meter. We found that the Respondent acted negligently and carelessly in handling this matter.

The Respondent submitted that the Complainant is not exonerated from paying for the electricity services he has enjoyed when the meter was malfunctioning .In support of such assertion the Respondent, in its final submission, cited Regulation 8(1) (b) of the Electricity (General) Regulations, G. N. No 63 of 2013, which reads and we quote:

"in establishing the cost of revenue loss if occurred, the licensee shall consider the revenue loss based on the consumption trend of the customer or installed capacity"

We have considered the argument by the Respondent's counsel above together with the cited provision of the law but with all due respect we beg to differ with her. We are of the opinion that the counsel had cited an inappropriate provision of the law. We are of the view that the proper provision applicable under this matter is Regulation 12(1) of the same Regulations instead of Regulation 8(1). Regulation 12 of G. N. No 63 of 2013 provide that where the meter is found to be defective through no fault of the customer or the licensee, the licensee may, in consultation with the customer determine the reasonable quantity of electrical energy supplied and recalculate the charges that the customer is supposed to pay but in any case the maximum period should be 12 months. However, the Regulations went further by providing that and we quote:

".....if the customer reports any suspected defect in the meter and the licensee has not immediately examine the meter, the licensee shall not be entitled to recover from customer energy consumed for more than three

months from the date on which the meter was established to be defective."

Since it was the Complainant who reported the defectiveness of the meter and it took the Respondent more than two years to replace the said meter, it is our considered opinion that such delay or laxity amounts to carelessness on part of the Respondent and such laxity cannot be condoned at the detriment of the Complainant. The mere excuse made by RW that they had no meters at the store to replace the Complainant's meter immediately cannot be accepted. Based on Regulation 12, the Defendant is entitled to recover energy consumed by the Complainant while the meter was defective for a period that does not exceed three months. From the sheet adduced showing consumption trend of the Complainant, the Complainant was consuming on an average of 298 kWh per month which is equal to TZS 22649.79 per months. Thus for three months the total amount will be TZS 67,949.37. In view of that the Respondent is only entitled to recover from the Complainant TZS 67,949.37.

Therefore our decision in the first issue is in the negative to the effect that the outstanding debt of TZS 651,504.52 claimed by the Respondent is unjustified. The Respondent is entitled to recover from the Complainant only TZS 67,949.37.

Issue No. 2: What are the remedies to the parties if any?

The Complainant demands that the debt be cancelled because they are not responsible for the whole messy and the Respondent should take the whole blame. The Complainant is of the view that had it been the Respondent had acted diligently the alleged debt could not be there. The Respondent on its part prays for the dismissal of the complaint and the Complainant be ordered to pay the debt of TZS 651,504.52 being the revenue loss due to defective

meter. The Respondent also prays for any other reliefs the Authority may deem fit to grant.

Since our decision in the first issue has been in the negative to the effect that the amount claimed by the Respondent was found to be unjustified and thus, the Respondent is only entitled to recover TZS 67,949.37 from the Complainant. If the Complainant has started settling the demanded supplementary bill from the Respondent by deduction to any monies paid when purchasing electricity through her LUKU meter or any other modality, the Respondent shall refund to the Complainant any excess monies paid. The Complainant is also awarded the costs of this complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 10th day of March 2017.



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FELIX NGAMLAGOSI
DIRECTOR GENERAL

