

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

COMPLAINT NUMBER: GA. 71/135/36

HAMIS MOHAMED MKAPUNDACOMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 129th Ordinary Meeting held at
Dodoma on the 28th June, 2018*

1.0 Background Information

On 31st December, 2015 Mr. Hamis Mohamded Salum Mkapunda ("the Complainant") a resident of Kongowe Mzinga Area in Temeke Municipality within Dar es Salaam City filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The Complainant claims for payment of TZS 70, 000,000.00 being compensation for the damage to his three shop rooms and one dwelling room following a fire incident which occurred on 2nd March, 2014 at his house located at Kongowe Mzinga Area in Temeke Municipality ("the premises").

The Complainant alleges that on 2nd March 2014, there was frequent power interruptions in his area which led to the fire break out at around 7 pm. The

Complainant claims that the fire destroyed three shops rented to different people and one bed room at the rear of the premises. The shops were closed at the time the fire broke out.

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 11th January, 2016. The Respondent replied on 16th February, 2016 and denied any liability. The Respondent further stated that the fire that destroyed part of the premises must have started from one of the shops at the premises. The Respondent further stated that after their investigation it was discovered that the entire electricity infrastructure that belongs to the Respondent including two electrical meters were safe and intact. The defence by the Respondent implies that the fire must have started within the Complainant's premises due to some anomalies in the infrastructure or the appliances therein. Additionally, the Respondent stated that the Complainant receives electricity supply services via the same line that supplied many other customers who none of them were affected on that fateful day.

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 conducted on 11th August, 2017, the Complainant appeared in person. The Respondent on the other hand did not appear despite the fact they were duly served thus the matter was heard *ex-parte*. The following issues were framed for determination:

- 2.1 what was the source of the fire
- 2.2 whether the Respondent is liable; and

2.3 what reliefs or remedies are the parties entitled to, if any?

During hearing, the Complainant testified as CW1 and Omari Abdallah Ngayonga as CW2 a tenant in the premises in question who at the time of the incident was residing at the room at the rear. CW1 tendered exhibit “C1” which is the Police First Information Report, dated 21st March, 2014, exhibit “C2” which is the letter from the Respondent Company to the Complainant dated 31st March, 2014, exhibit “C3” which is the letter from the Complainant to the Regional Manager of the Respondent for Temeke Region dated 9th April, 2014, and exhibit C4 which is the letter from the Complainant to the Director General of the Authority, dated 31st December, 2015.

3.0 **The Decision**

In arriving at our decision, we have considered the applicable laws which include the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 (“the Act”) and the EWURA (Complaints Handling Procedure) Rules, GN No. 10/2013. We have also considered the oral testimony of the witnesses together with documentary evidence tendered during the proceedings. Our decision on the issues is as follows:

3.1 **What was the cause of the fire?**

CW1 testified that on the day of the incident he was away in Lindi Region where he permanently resides. On the face of it CW1 testimony is mostly hearsay based on what he was told by either CW2 or other people who were at the scene at the time of the accident. Whether CW1 evidence has been corroborated with other testimony we shall come to this question later having considered the testimony of CW2. CW2 is the tenant of CW1 residing at the back room of the damaged house. CW2 stated that on the evening of the fateful

day there were frequent power interruptions, so he switched off the power at his house and went out to a local club at about 8pm. CW2 testified to the effect that a few minutes later, he was called and informed that there was fire outbreak at his house. CW2 stated that on arrival at the scene he found fire burning in one of the three shops which was at the far end from the meter and the said fire was quickly spreading to the other two shops and a residential room at the rear; but with the help of good Samaritans they were able to control the fire and extinguish it. CW2 further testified that the shop from where the fire started had electrical appliances used for storing cold drinks and several merchandise were saved from the two shops except for the merchandise from the shop where the fire began.

CW2 testified that the fire started from the third shop but he does not know exactly what caused the fire. However, CW2 believes the cause of the fire to be electricity due to power interruptions that was happening that day. During cross examination, CW2 revealed that the disputed premises were installed with two meters, one serving the two shops, the rear room and an extension house at the rear which has five rooms. The other meter was installed for a stationaries shop only. During site visit by the parties and members of the Division which was conducted at the end of the hearing, it was confirmed indeed that there were two houses on the plot. The fore house consisted of three rooms used as shops and a bedroom at the rear whereas the second house was built right adjacent to the front one with five rooms. Before the fire incident both houses were supplied and served with only one meter which was installed at the left corner of the shops corridor. During the visit it was observed that a new meter had been installed which is dedicated for the five rooms house at the rear. The old meter therefore is now serving the three shops at the front and a bedroom at the rear. On the face of it, we find this rather unusual and it may be used as a ploy in covering up the violation done by the Complainant by illegally extending supply of electricity to the second house. The site visit further

revealed that the old meter which served the entire premises except one stationaries shop, which had its dedicated meter, was still working properly. This is an indication that the said meter was not affected by the fire. The visit concluded that both meters, the one supplying the stationaries shop and the one supplying the rest of the premises, were intact before, during and after the fire incident. Additionally, during the site visit it was revealed that the stationaries shop owner removed the meter after the fire incident.

Both CW1 and CW2 claim that power interruptions on that fateful day were the cause of the fire outbreak. As pointed out in our previous decisions on this point, the expert opinion has indicated that power interruptions cannot cause fire outbreak unless there is power surge in which case customers will experience problems in their electrical appliances. Since there was no power surge in this case, then power interruptions cannot have any effect at all. Having eliminated power interruption as the possible cause of the fire outbreak, then any electrical fault that caused the fire is likely to be beyond the Respondent's infrastructure. As testified by CW2 that at the time of the fire outbreak all the shops were closed and that the shop in which the fire broke out has electrical appliances such as fridges and freezers. We are convinced that a fault in any of these appliances could have been the cause of the fire outbreak. However, we are concerned as indicated earlier that, the site visit revealed some violations, on part of the Complainant, with regard to power connection and the Complainant had tried, albeit in vain, to conceal it no wonder he never mentioned it during hearing. The Complainant's subsequent action of installing a second meter immediately after the fire incident made us to believe that there was foul play on his part. It is against the aforementioned, we are of the view that, the Complainant has failed to prove on the balance of probabilities, that the Respondent's infrastructure is responsible as the source of the fire that destroyed the Complainant's house.

3.2 Whether the Respondent's Company was Negligent

The Complainant alleges that the Respondent was negligent by failure to supply stable and consistent electricity. The Complainant alleges that on the day of the incident there were power interruptions which the Complainant believes was the cause of the fire outbreak. It is trite law that in order for one to establish negligence, the Plaintiff/Complainant has to establish that there was a duty of care on part of the Defendant/Respondent and such duty has been breached and as a result occasioning loss to the said Plaintiff/Complainant.

Having concluded that the Complainant has failed to establish the source of the fire that destroyed his house, we find it difficult to impute any negligence on part of the Respondent.

3.3 What Reliefs or Remedies are the Parties Entitled to, if any?

The Complainant prayed for compensation at the tune of TZS 70,000,000.00. Our holding in the first and second issue, collapses the claim by the Complainant and we are left with no other option than dismissing the complaint and each party should bear its own costs.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 28th June, 2018.

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NZINYANGWA E. MCHANY
DIRECTOR GENERAL