

7

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

**COMPLAINT NUMBER EWURA 33/1/472**

**BETWEEN**

**HARUNI MOHAMED KOSHUMA ..... 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 22<sup>nd</sup> February, 2017, the Energy and Water Utilities Regulatory Authority (“the Authority”) received a complaint from one Haruni Mohamed Koshuma (“the Complainant”) claiming for TZS 105,000,000.00 as damages following fire outbreak which gutted down his house located within Moshi municipality. The Complainant alleges that on 13<sup>th</sup> August, 2012, there was a fire outbreak at his house located at Majengo Area within Moshi Municipality. On the date of incident, the Complainant was not at the scene but obtained information regarding the incident through a phone call from one of his children. The

Complainant further alleges that the source of fire was electric power supplied by the Tanzania Electric Supply Company Limited (“the Respondent”).

From the above facts, the Complainant claims for TZS 105,000,000.00 as damages for his destroyed house.

Upon receipt of the complaint, the Authority required the Respondent to file the reply to the complaint in terms of Rule 5(1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, 2013. The Respondent filed the reply accordingly and paved the way for further processes on the complaint. In reply to the complaint the Respondent denied any liability on the ground that the source of fire was not from the Respondent’s infrastructures.

Efforts to mediate the parties were taken under the supervision of the Complaints Unit of the Authority and proved futile and thus the matter was referred to the Division of the Authority for hearing.

On the first day of hearing, the Respondent raised a preliminary objection on time limitation. The essence of objection was that the cause of action arose on 13<sup>th</sup> August, 2013 but the dispute was filed on 22<sup>nd</sup> February, 2017 hence time barred. The Division dismissed the objection on the ground that there was no laxity on the party of the Complainant and allowed the matter to proceed on merit.

## **2.0 Hearing Stage**

The hearing of this matter was conducted on 19<sup>th</sup> – 20<sup>th</sup> February, 2018, 13<sup>th</sup> June, 2018 and 3<sup>rd</sup> July, 2018 respectively. During the hearing, the Complainant

appeared in person whilst the Respondent was represented by its Principal Zonal Legal Officer one Karonda Kibamba, learned advocate.

Before starting the hearing the following two issues were framed for determination:

- (a) whether the source of fire that destroyed the complainant's house was caused by an electrical fault; and
- (b) what are the remedies to the parties, if any.

At the hearing, the Complainant (CW1) called Mr. Abtwalib Athuman Msangi as the second witness (CW2) and Mr. Joseph Daniel Werema as the third witness. The Respondent called Mr. Nyimadi Yange as the first witness (RW1), Mr. Edfonce L. Shayo as the second witness (RW2), Mr. Frank Francis Komba as the third witness (RW3), Mr. Fred Ujulu Kayega as the fourth witness (RW4) and Mr. Peter Masanja as the fifth witness (RW5). The Complainant tendered a letter dated 5<sup>th</sup> April, 2016 addressed to TANESCO as exhibit "C1", a picture of the suit premises taken after the incident as exhibit "C2", written arguments on the circumstances showing that the Respondent is liable on the matter as exhibit "C3" and letter dated 18<sup>th</sup> February, 2013 addressed to TANESCO as exhibit "C4". The Respondent tendered five incident pictures collectively marked as exhibit "R1" and Investigation Report as an exhibit "R2".

### 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 Procedure) Rules, 2013. We have also considered oral testimonies of witnesses from both sides, exhibits tendered, final submissions made by the Complainant



and best electricity industry practices. Our decision on the issues raised during hearing of the matter is as follows:

**Issue No. 1: whether the source of fire that destroyed the complainant's house was caused by an electrical fault**

Looking at the facts of the complaint and testimonies from witnesses, we may sum up that it is not in dispute that on 13<sup>th</sup> August, 2012 there was a fire incident that destroyed the Complainant's house and resulted to this dispute. On the material date, the house was supplied electricity by the Respondent through a nearby pole standing about 2-3 metres from the Complainant's house. Apart from the Complainant, the pole also connected electricity to other seven customers of the Respondent. As a result of fire incident, the pole was slightly burnt at the mid leaving its bottom and top sides intact. The fire incident caused damages to the Complainant's house alone without affecting the other seven customers connected to it. The dispute then lies on whether the source of fire was caused by an electric fault.

In determining this issue, we have evaluated the testimonies of CW1, CW2, C3, RW1, RW2, RW3, RW4 and RW5 and further examined all the documents tendered by the parties as exhibits. CW1, the Complainant herein testified that he owned the house (the suit premises) located in Majengo Area within Moshi Municipality. It is alleged that the suit premises were completely destroyed by fire in the noon of 13<sup>th</sup> August, 2012 due to an electric fault. The electricity which destroyed the Complainant's house was supplied by the Respondent through a pole located three meters away from the house. At the time of the incident, CWI was not at the scene as he does not dwell in the suit premise but informed about the same by his children. Upon arrival at the scene, he found the fire already arrested, his house completely burnt and the pole supplying power to the suit premises burnt but still standing intact. Following the fire incident, the

Respondent constituted an investigation committee comprising personnel from TANESCO, the police force as the chairman of the Committee, the fire and rescue brigade as the secretary and the Complainant. The committee came out with a Findings Report (*the Report*) failing to reveal a source of fire and the same was not acceptable to CW1 on the ground that the Committee did not have a person from a neutral institution. CW1 quoting from the Report, testified that the Committee revealed that there were seven other customers connected through the same pole supplying the suit house and the wiring thereof was not in the required standards. It was CW1's testimony that improper wiring in relation the pole supplying power to the suit premises and other customers was the cause of electric fault consequently causing fire to his house. CW1 tendered exhibits "C1" – "C4" and concluded his evidence by praying compensation against the Respondent to the tune of TZS 105,000,000.00 being the value of the Complainant's house destroyed by fire.

CW2 testified that on 13<sup>th</sup> August, 2012, he heard noises from people running towards a burning house located at Majengo, Bukoba road in Kilimanjaro. CW2 also approached the burning house and alleged to see fire flames jumping from the electricity pole to the iron sheet of the Complainant's house. An hour later, the fire brigade arrived at the scene and managed to arrest the fire. When cross-examined, CW2 changed the story to the effect that he heard from the crowd that the fire started at the pole since he reached there and found the fire to have already started.

CW3 testified that he is a neighbor of the Complainant. It was the testimony of the CW3 that on the noon of 12<sup>th</sup> August 2012, he heard noises and ran outside his house. While outside, CW3 saw fire flames at the pole supplying the suit premises jumping to the Complainant's house. CW3 approached the scene and assisted in rescue services until the fire brigade arrived and arrested the fire.



CW3 testified further that his house is also supplied with power through the same pole supplying the suit premises but was not affected by the incident.

On the Respondent's side, RW1 testified that on 13<sup>th</sup> August 2012 noon he was informed by his supervisor that there is a fire burning the house at Majengo area, Bukoba road within Moshi Municipality. RW1 was instructed to proceed to the scene to arrest the fire. Upon arrival, RW1 found the suit premises under fire and they managed to contain it. After the material date, the Respondent constituted a Committee to investigate the incident which started the proceedings on 29<sup>th</sup> October until 1<sup>st</sup> November, 2012. RW1 was a member to this Committee together with other members from various institutions including the Respondent and the Complainant. It was the testimony of RW1 that those who testified in the Committee had various versions of stories. Some said that the source of fire was from the pole where there were sparks which travelled to the meter causing fire to explode. Some denied to have witnessed the source of fire. RW1 further testified that they took some pictures of the pole, meter cover, the building, the electricity system inside and electricity system from the pole to the house. After investigation, it was concluded that the source of fire was unknown and sparks alone without combustible material nearby could not have caused the fire. RW1 tendered five pictures taken at the scene of incident as exhibit "R1" (a)-(e) collectively. Explaining on the exhibits, RW1 testified that the pole supplying power to the suit premises was slightly burnt at the middle suggesting that hot flames from the house was responsible. It was RW1's further testimony that tenants at the suit premises informed the Committee that there was no power in the suit premises at the material time since the tenants used to switch off the power during the day to minimize consumption.

RW2 testified that on the material date a good Samaritan came to his office and informed him that there was a house burning at Majengo street in Moshi. Following the information, RW2 and his team quickly proceeded to the scene

of incident and found the suit premises under fire. The Respondent too arrived at the scene about two minutes later and disconnected power supply to the house enabling RW2 and his team to start putting off the fire. After the fire incident, the Respondent constituted an investigation team to probe the cause of fire in which RW2 was a secretary of the committee. The committee had two members from the Fire and Rescue Services, two from the police force, a person from TANESCO, Manyara, Eng. Masanja and a person from TANESCO HQ and the Complainant as well.

During the investigation, the team did not trace the remains of a meter and wires probably removed immediately after the incident since the same were there on the material date. We interrogated the neighbors but did not get enough information on the source of fire as we couldn't find the house maid who was at the house at the time of the incident. One of the tenant told the committee that he had told the house maid to prepare chips for lunch for the kids and there was a charcoal cooker at the house. The committee concluded investigation and issued a report thereof which did not disclose the source of fire.

It was the testimony of RW3 that somewhere in October 2012, he was informed by his supervisor that he is among the investigation team members appointed to probe the source of fire which destroyed a house located in Majengo within Moshi municipality. The committee started its work on 29<sup>th</sup> October 2012 with two members from the police force, two from fire and rescue brigade, TANESCO officials and the Complainant. RW3 was appointed as the Chairman of the Committee. At the suit premises, the committee did not trace the remains of the meter and wires. There was only the meter box with loose screws suggesting that the meter was intact but removed after the incident. There was a pole standing about 2-2.5 meters from the suit premises which supplied power to the Complainant's house. The pole was slightly burnt at the middle leaving its top and bottom intact. The committee interviewed a number of



neighbors but none was around the suit premises in the material date. The house maid allegedly to be present in the suit premises and witnessed the fire was not traced for interview. However, some neighbors informed the Committee to have seen sparks in the pole supplying power to the suit premises some days before the incident. Other neighbors denied to have seen the sparks. The Committee followed up the matter with the Respondent but discovered the same was not reported for action. After investigation, the Committee prepared the Report which RW3 tendered it as exhibit "R2". The Report did not reveal the exact source of fire.

RW4 testified that he was part of the investigation team constituted to investigate the source of fire on the suit premises. During investigation, it was noted that the pole supplying electricity to the Complainant's premises is also connecting six other customers and was partially burnt at the middle. RW4 also testified that the committee revealed that none of the neighbors was at the scene of incident at the material time. However, one of the neighbor called Mary arrived at the scene shortly after the fire outbreak and saw some sparks at the pole supplying power to the suit premises. There was another neighbour who told the committee that she had previously seen sparks in the past but did not report to TANESCO. The neighbors further stated that it was only the Complainant's premise which was affected by fire or electric fault in the material day. RW4 claimed to have seen the wire supplying power from the pole to the suit premise whose plastic shield was slightly burn at the middle and the end. It was the testimony of RW4 that sparks alone cannot be a source of fire unless there are combustible materials nearby which may cause fire upon contact with the sparks. It is also difficult for an electric fire to start and travel through a wire to burn the end contact. RW4 further testified that over voltage is a common source of fire but would normally affect many people using the same supply line. The fact that other customers using the same service line were not affected means that there was no over voltage.



RW5 testified that he was a member of an investigation team formed to inquire on the source of fire to the Complainant's house. The team produced a report which did not disclose the source of fire and also did not establish any liability of to the Respondent. The Report was submitted to the Respondent and was a basis of denying the Complainant's claims.

Both parties opted to file closing submissions after conclusion of the oral testimony. Until 17<sup>th</sup> July, 2018 which was the deadline set for filing the final submissions, only the Complainant filed the same. Meanwhile, the Division visited the scene of incident on the 20<sup>th</sup> February, 2018. At the scene of incident it was noted that, the Complainant's house which was destroyed by fire demolished and replaced by another modern house. The pole which used to supply the power to the suit premises was also not there and was replaced by another pole. To make the point home, everything relating to the dispute at the scene was new hence the Division did not have the opportunity to eye witness the remains of the suit premises and the material pole.

We have examined all the testimonies and evidences tendered, together with the final submissions by the Complainant. There is no dispute that the Complainant's house was completely consumed by fire in the noon of 13<sup>th</sup> August, 2012. The house was supplied with electricity by the Respondent. None of the witnesses who testified from both parties was the eye witness of the source of fire. All the witness arrived at the scene of incident after the fire has already erupted. The committee formed by the Respondent to investigate the source of fire failed to establish the cause.

The Complainant insisted that the fire started at the pole and transmitted through the wire to the meter. From the meter the fire spread throughout the house. This version of the story was subscribed by CW2 and CW3. However,

with due respect, we are inclined to give any weight to the testimony of CW2. He is a kind of witnesses who are not credible. During the testimony, CW2 alleged to have seen the fire at the pole which then transmitted through the wire to the Complainant's house. Surprisingly, during cross examination, he admitted not to have seen the fire at the pole and came with a different story that what he said was heard from those who were present at the scene. This makes CW2 untrustworthy and his evidence accorded no weight at all. We now remain with the evidence of CW1 and CW2 who have the same version of story that the fire started at the pole and then transmitted through the wire to Complainants house. This evidence was corroborated with some of the Complainant's neighbors who were interviewed by the investigation team as testified by all the Respondent's witnesses who were among the members of the Committee.

Notwithstanding the witnesses' testimony on the source of fire from both parties, none of them was present at the suit premises when the fire erupted. Even the neighbors who testified stated that they saw the sparks at the pole after the house has caught fire. The only person who was present at the material day was the house maid who did not testify. Neither the investigation committee nor the Division of the Authority had privilege to hear the direct words from this house maid. The Respondent's witnesses testified that the source of fire was not established and there were no evidence to suggest any negligence or fault by the Respondent to cause the fire incident. With this evidence where the Complainant's side allege that the fire started at the pole through sparks then transmitted to the suit premises while the Respondent denying this version of story, we are now asking ourselves whether it was the sparks which caused fire to pole and transmitted through the wire to the Complainant's house or not.

As stated earlier, there is no witness who witnessed the fire starting. All of them came after the fire has erupted. CW3 and the neighbors interviewed by the



investigation committee testified to have seen the sparks at the pole. They went on to say that these sparks caused fire at the pole and then fire transmitted through the supply wire to the Complainant's house. These testimonies are contradictory. While the witnesses admitted not to be at the scene when fire erupted, it is surprisingly they are now telling that they saw fire starting at the pole and transmitted to the complainant's house through the wire. Our analysis concludes that there were actually sparks at the pole immediately after the fire outbreak due to the consistent stories on the sparks by CW1, CW3 and RW1-RW5. Now the issue is whether those sparks caused fire at the material pole which was transmitted through the supply wire to the Complainant's house. To us, as rightly testified by RW4, we are not subscribing to this version of the story. First, all the witnesses who testified to have seen the fire starting at the pole and then transmitted to the suit premises through the supply wire came after the fire has started. The second reason is a technical one which does not support the version of this story. While it is agreed that sparks can cause fire, the fire can only happen if there are combustible material nearby which may catch fire upon coming into contacts with the sparks. Otherwise, sparks alone can never cause fire in the absence of the combustible materials. Furthermore, it is technically improbable that the fire can be transmitted through the wire. Given the circumstances, the wire may transmit heat but not fire. RW4 testified that he saw the supply wire being slightly burnt at the middle to the bottom. This evidence was not contradicted by the Complainant. As such we take this evidence as the undisputed fact and ask ourselves if the fire started at the pole, why the supply wire did not burn from the top and only burning occurred at the middle and bottom?. This brings to a conclusion that the sparks at the pole did not cause fire since if the same would have caused fire, then the supply wire would also burn at the top downwards.

Since we did not have the privilege to set our eyes on the suit premises and the material pole, we will heavily rely to exhibit "C2" and "R1". These exhibits

portray the appearance of the scene of incident immediately after the incident. Both parties agreed with the authenticity and correctness of these exhibits. There were no doubts to the exhibits. Both exhibits shows the pole supplying power to the suit premises and other customers standing intact just close to the suit premises which seemed to have been completely destroyed by fire. The pole further shows slight burns at the middle while its top and bottom parts seems to be intact. Supply wires are connected to the top of the pole and from there leads to the nearby houses. What does this suggest in the eyes of an ordinary man?. If we take the route that fire started at the pole, then the same would have started at the top where supply wires are connected and hence burned the pole at the top. There are no evidence of any combustible material at the top of the pole For this, we rule out the possibility of fire starting at the pole otherwise the pole would have been burnt at the top. The next question is what caused the pole to burn at the middle leaving its top and bottom intact. As testified by RW2 – RW4 and observation form exhibits “C2” and “R1”, the pole is very close to the Complainant’s house; it is about 2-3 meters. The fire in the suit premises produced hot flames and it is highly probable that the flames burnt part of the pole when escaping. In the final analysis, we are convinced that the source of fire which destroyed the Complainants house was not caused by an electric fault.

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**Issue No. 2: what are the remedies to the parties, if any.**

Having decided on the first issue, we now come to the reliefs the parties are entitled. The Complainant is praying for payment of TZS 105,000,000 as compensation regarding his destroyed house. Success of the Complainant to recover damages will depend on the outcome of the first issue. Since the Complainant has not succeeded on the first issue, it goes without saying that he is not entitled to damages from the Respondent. It is also important to note by way of *orbiter dictum* that even if the Complainant would have succeeded in the



first issue, still he could not recover the specific damages prayed save for reasonable general damages. The Complainant did not provide any document or explanation to substantiate the claimed TZS 105,000,000.00. There was no valuation report to justify the figure. The Complainant has already sold the suit premises at the time this matter came for hearing and the buyer of the same demolished it and erected another house.

For the reasons advanced herein, this Complaint is dismissed in its entirety. Each party to bear its own cost.

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



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