

ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

(EWURA)

COMPLAINT NUMBER EWURA/33/1/139

BETWEEN

**JUMA HUSSEIN MBONDO COMPLAINING
AS THE ADMINISTRATOR OF PETER SHOMARI,
THE DECEASED COMPLAINANT**

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITEDRESPONDENT

AWARD

**(Made by the Board of Directors of EWURA at its 84th Meeting held at Dar
es Salaam on the 8th day of April 2014)**

1.0 Background Information

On 9th February, 2012, Mr. Juma Hussein Mbondo, being the administrator of the estate of the late Peter Shomari ("the Complainant"), lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") against the Tanzania Electric Supply

Company Limited ("TANESCO") ("the Respondent") claiming for payment of TZS 500,000,000 being compensation for the death of the late Peter Shomari (the deceased) whose death is alleged to have been caused by an electric shock resulted by the Respondent's negligence.

The Complainant alleges that on 28th July 2011, he was informed of the death of the deceased Peter Shomari while he was on his way to Dar es Salaam from Morogoro. The Complainant alleges that the deceased was electrocuted while he was working at Tabata Baraccuda area in Dar es Salaam. According to the Complainant an electric conductor fell over the deceased and rolled over his body and electrocuted him to death. The Complainant claims for the payment of TZS 500,000,000 being the compensation for the death of the deceased.

The Respondent responded by denying responsibility for the death of the deceased. Furthermore, the Respondent stated that on the fateful day of 28th July 2011 there were some technical faults at the High Tension (HT) and Low Tension (LT) conductors at Tabata Baraccuda area which resulted into a big explosion closely to where the deceased was working. The Respondent argued that the death of the deceased was caused by other factors and not electrocution due to the fact that there was a big distance of about 10 metres from where the deceased's body was found lying to where the broken conductors touched the ground.

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.

2.0 Hearing Stage

On 7th May 2013, the matter came for hearing and the Complainant was represented by Ms Consolata Mtana a Legal Officer from Marando and Mnyele Advocates, a law firm based in Dar es Salaam. The Respondent was represented by Mr. Frolence Kahatano, learned advocate.

The Complainant stood as the first witness (CW1) and further called Mr. Mashaka Masingija as the second witness (CW2), Mr. Castor Shaban as the third witness (CW3) and Mr. Mohamed Ali as the fourth witness (CW4). The Respondent brought two witnesses, Ms. Winifrida Nyagawa, the Respondent's Maintenance and Service Line Supervisor as the first witness (RW1) and Mr. Aziz Chande, Installation Inspector as the second witness (RW2). Both parties tendered various documents as exhibits.

The following issues were framed for determination:

- (a) whether the death of the late Peter Shomari was caused by electric shock;
- (b) whether the death of the late Peter Shomari was caused by negligence of either party; and
- (c) what are the reliefs to the parties, if any?

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 EWURA (Complaints Handling Procedure) Rules, GN

No. 10/2013. We have also considered oral testimonies of witnesses together with the exhibits, closing submission of the Respondent and good electricity industry practices. We have also observed that the Complainant's Counsel, for reasons best known to herself, has opted not to submit her closing submissions.

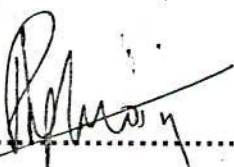
Before deciding on the issues raised, it has come to our mind that we should first satisfy ourselves on whether the complaint is properly before us. We find it pertinent for this question to be answered due to the fact that the Respondent, being the service provider, is only responsible to its customers, tenants and prospective customers in connection with the delivery or purported delivery of regulated services. Section 34 (1) of the EWURA Act provides for the applicability of Part VI which covers on complaints handling procedure.

Section 34 (1) when read together with section 34 (7) of the EWURA Act provides that Part VI of the said Act relates to any complaints filed by any customer in relation to supply, possible supply or purported supply of regulated services. To put it brief, in order for any person to successfully lodge a complaint under the provisions of Part VI of the EWURA Act, he must be able to establish, *inter alia*, the existence of the customer/supplier relationship. The nature of this complaint is on the alleged tort of negligence. The Complainant alleges that, it is due to the negligence of the Respondent, Mr. Peter Shomari died due to electric shock. The pertinent question to ask ourselves here is whether this matter qualifies as a complaint within the context of section 34 (1) when read together with section 34 (7) of the EWURA Act. It is our considered opinion that, the manner in which Mr. Shomari died does not make him

the customer or the consumer of the regulated services provided by the Respondent at that particular time. Conclusively, we are satisfied that the manner in which Mr. Shomari died did not create the customer/supplier relationship and therefore not giving rise to a complaint. The Complainant is at liberty to seek redress against the Respondent with respect to the alleged tort of negligence in the ordinary courts of law.

Having concluded that the complaint was not properly before us, we are left with no other option than dismissing the complaint with no orders as to costs. We do not see the need to discuss on the issues framed.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 8th day of April 2014.


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Felix Ngamlagosi
DIRECTOR GENERAL