

**THE ENERGY AND WATER UTILITIES REGULATORY
AUTHORITY**

COMPLAINT NUMBER EWURA/33/1/84/18

BETWEEN

KISAGHU RENGETA COMPLAINANT

VERSUS

TANESCO..... RESPONDENT

AWARD

(Made by the Board of Directors of EWURA at its 65th Ordinary Meeting held
at Dar es Salaam on the 14th day of September 2012)

1.0 Background Information

On 17th March, 2011, Mr. Kisaghu Rengeta ("the Complainant") lodged a complaint against Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent") on the alleged incorrect electricity bills supposedly imposed by the Respondent from early 2005. In short the Complainant disputes the electricity bills from the Respondent which do not match with his actual power consumption.

The Complainant claims that from 2005 onwards he was living alone at his premises located at Kibaha Municipality and there were no equipment which was consuming electricity apart from few security lights. The Complainant alleges that as he was working in Dar es Salaam he always left home at 5.00 am and came back late at night. He further states that for the

period between 2005 and 2009 he was attending studies at an unspecified college and thus, power was generally not consumed at his premises. The Complainant claims that the last bill he paid was TZS 50,000.00 which was paid in early 2005. The Complainant enquired from the Respondent on how the bill had reached TZS 50,000.00 and he was told that the said bill included previous arrears; however, the Respondent did not clarify how the said arrears had accrued. The Complainant followed up the matter with the Respondent and he was promised that the Respondent shall deal with the matter soon.

In April 2007 the Complainant received an electricity bill of TZS 7,012,844.00, which he objected and on 18th June 2007 he wrote to the Respondent asking for a meter change. On 26th June 2008 the Complainant wrote another letter to the Respondent reminding them that the problem with his meter was still persisting and he insisted on the replacement of the said meter. The request for a meter change was not acted upon until March 2010 when the defective meter was replaced with a LUKU meter. After the meter was replaced the Complainant used to buy LUKU token as usual until December 2010 when he was told that the Respondent owes him TZS 1.8 million, which he disputed. Following a dispute from the Complainant and the subsequent follow ups, the Respondent on 23rd February 2011 informed the Complainant that, his debt has been adjusted to TZS 864,193.00.

The Complainant finally concluded his testimony by stating that it is not clear as to what is the exact amount he owes the Respondent. CW stated that the Respondent has been claiming from the Complainant different amounts of money at different times. CW stated that on 20th January 2007 he was given a bill of TZS 7,012,844.60 and then a bill for 1.8 million was carried over into his LUKU meter, which was followed by another bill of TZS 864,193.85 issued on 23rd February 2011. CW further states that when he reported the matter to EWURA, the Respondent wrote a letter to EWURA on 13th April 2011 showing that the bill stands at TZS 851,992.50.

The Respondent on the other hand admits that in the year 2007 the Complainant's meter was not functioning properly and from 2005 to 2007 the meter was reading an error of +11.141%. However, the Respondent states that the Complainant's meter was attended closely by his officers and the supplementary bill was prepared and issued with a view to correcting the previous incorrect bills. The Respondent testified that corrections were done by taking the monthly consumption minus the percentage error (which was +11.141%) for every month from the time the error started. By so doing the Complainant correct bill was adjusted to TZS 851,992.50 being the amount payable for electricity consumed by the Complainant from the year 2005 to 2010.

Upon receipt of the complaint, on 23rd March 2011 EWURA wrote to the Respondent requiring the Respondent to provide, *inter alia*, the clarification on the complaint lodged by the Complainant. In its reply the Respondent argued that it has indeed corrected the Complainant's account by correcting the error of +11.141%. The corrections were clearly indicated in the Customer Statement. Efforts were taken to mediate the parties with a view to settling the matter amicable but they proved futile and the matter was referred to the Division for a hearing.

2.0 Hearing Stage

On 26th September 2011, the matter came for hearing and the Complainant was represented by Mr. Fredrick Mwakinga, learned advocate and the Respondent was represented by Ms Batilda Mallya, learned advocate. The following issues were framed for determination;

1. whether the Complainant's claims are genuine;
2. whether the Respondent's bill of TZS 851,992.05 is justifiable; and
3. what reliefs the parties are entitled to .

During hearing the Complainant stood as the only witness (CW) and the Respondent brought three witnesses namely Eng. Joachim Ruweta (RW1),

Mr. Richard Maeda (RW2) and Mr. Isaac Mosha (RW3). Both parties tendered various documents as exhibits.

1. Issue No. 1: Whether the Complainant's Claims are Genuine

In addressing this issue, we have taken our time to look at the meaning of the word "genuine". Literally, the term "genuine" is used to describe people or things that are exactly what they appear to be and are not false or an imitation.

CW stated during the examination-in-chief that he received incorrect bills from the Respondent since 2005 which did not correspond to his actual power consumption. CW testified that from 2005 onwards he was living alone at his premises located at Kibaha Municipality and there were no equipment that was consuming electricity apart from few bulbs for security lights. CW testified to the effects that he was working in Dar es Salaam and he always left home at 5.00 am and came back late at night.

CW also testified that from 2005 to 2009 he was attending studies at an unspecified college and no one was staying at his premises. After he graduated he returned to his house with his wife, his young brother and his wife and three children. CW testified that his monthly power consumption when his house is fully occupied is TZS 20,000.00 per month which amount cannot be implied at the time when he was living alone. CW stated that on different occasions he was receiving estimated bills and supplementary bills from the Respondent which were handwritten.

CW doubted on the correctness of the bills received from the Respondent which were apart from being on the higher side but also handwritten. CW further testified that the Respondent has admitted on couple of times that the Complainant's meter was not functioning properly. To cement his testimony CW alleges to have been given four different bills as follows: TZS 7,012,844.60 on 20th January 2007, TZS 1,800,000 carried forward into his LUKU meter, TZS 864,193.84 on 23rd February 2011 and 851,992.05 on 13th

April 2011. All those bills were issued with no analysis from the Respondent to substantiate on how they were arrived at.

In his final submissions, the Complainant's Counsel argued that different unanalyzed bills sent by the Respondent to the Complainant raises doubts on diligence and authenticity on part of the Respondent; and further building the basis of the Complainant's complaints. He further laments that the variation on the bills issued by the Respondent is something any reasonable man would have disputed and complained about. The Complainant's counsel concluded by imploring EWURA to find the Complainant's claims meritorious and genuine.

The Respondent despite admitting that the Complainant's meter was at sometimes reading at an error, the said meter was subsequently removed and replaced with a LUKU meter and thereafter a supplementary bill was prepared and issued to the Complainant. RW1 stated that, the correct procedure was used in preparation and issuance of the Complainant's bills and the said bills were proportional to the Complainant's power consumption during the disputed period. The corrections on the incorrect bills were done by professional accountants of the Respondent by preparing and issuing supplementary bills which were handwritten.

RW2 testified to the effect that after the Respondent has realized that the Complainant's meter was reading at an error of +11.141%, it replaced the said defective meter with a LUKU meter. RW2 further testified that they reconciled the Complainant's bills from the period when the error started and the Complainant was issued with a correct supplementary bill which he was obliged to pay. RW2 further testified that the Respondent owes the Complainant TZS 851,992.05 from February 2005 to March 2010. The said bill comprise of TZS 358,000 being the old balance which was not paid for a period between 2005 and 2007, plus TZS 493,794 which is the bill after the adjustment of the error of +11.141% for the period between April 2007 and March 2010. During examination-in- chief, RW3 testified to the effect that

the Complainant's bill disappeared from the Respondent's system from 2005 to 2007. No explanation was given for such disappearance.

In his final submissions, the Respondent's Counsel argued that based on the tendered evidence, the bills issued by the Respondent were correct and the Complainant has to pay the Respondent on the ground that the former has failed to prove to the contrary. The learned Counsel further stated that the amount that was a result of the error of +11.141% founded by the Respondent was not included in monthly bills and thus the supplementary bill of TZS 851,992.05 is the correct bill as it was prepared by professional accountants of the Respondent.

We have evaluated the testimonies of both witnesses, together with the evidences tendered and the closing submissions and we are very thankful for the submissions of both parties. We would like to start by pointing out some undisputed facts. The malfunctioning meter, is not a subject of contention to both parties, since the Complaint has alleged so and the Respondent has admitted. Also it is not in dispute that the last time (before the dispute started), the Complainant pay his bill was in 2005, when he paid TZS 50,000.00. Additionally, it is not in dispute that the Respondent issued an incorrect bill amounting to TZS 7,012,844.60 on 20th April 2007 which was later on adjusted to TZS 1,800,000.00 which was carried forward to the LUKU meter and further TZS 864, 193.84 on 23rd February 2011 and TZS 851,992.05 on 13th April 2011.

Despite the points of no contention mentioned above, the centre of the Complainant's case rests on two major points viz., the fact that he was issued with incorrect bills which did not correspond with the actual power consumption and on the variations of bills issued by the Respondent. Guided by the literal definition of the term "genuine" cited above, one question we are tasked to address here is whether the Complainant's claims are genuine.

The Respondent has admitted that the Complainant's meter was defective with a reading error of +11.141% and as a result of such defect, the said meter was replaced by a LIUKU meter and thereafter supplementary bill at the tune of TZS 851,992.05 was prepared. Preparation and issuance of supplementary bills is not alien in utility companies in general and the electricity industry in particular. In this matter, the Complainant is not disputing on the outcomes of the meter testing which was done by the Respondent, but rather casting some doubts on the correctness of the supplementary bill.

It is our holding that despite some confusion on what exact amount did the Complainant owe the Respondent (See Exhibit "R1"), there is no doubt that the Complaint has consumed, albeit with the malfunctioning meter, power from the Respondent. This fact has also been reflected in the closing submission by the Complainant's counsel in page 10, where it reads:

*"On the other hand, it is really sounds fun because PWI (CW) in his examination-in-chief told the Authority that he is not intending to escape his responsibility of paying the defendant (Respondent) **bills due to him because he has benefited from his services throughout the lifetime of the dispute**" (emphasis supplied)*

Having found that the Complainant has indeed, albeit with a malfunctioning meter, consumed power from the Respondent during the disputed period, the next question to ask ourselves is on the correctness of the supplementary bill. It is no doubt that there has been some confusion on the exact amount the Complainant owes the Respondent. The Respondent has issued different bills with different amounts on different dates. Whereas the first bills (20th April 2007 and that which was embedded into the LUKU meter) were prepared during the time of the malfunctioning meter, the bills issued on 23rd March 2011 and 13th April 2011, were issued after the replacement of the malfunctioning meter.

Can the difference in the exact amount the Complaint owes the Respondent absolve the former from the liability to pay for the services/goods he has consumed? The answer is simply "NO". It is no doubt that the Complainant has consumed the services of the Respondent during the disputed period. The excuse the Complainant is trying to rely on, that he was mostly absent and no one was living at his premises during the disputed period, apart from not being corroborated, it cannot, in the absence of any other factors, be relied upon in establishing the exact amount of power consumed by the Complainant.

Usually the amount of power consumed is determined by the meter reading, unless there are defects in such meter. Regardless of whether there was someone living at a particular premises, the amount of power consumed, in the absence of allegations of malfunctioning meter, will only be determined by meter reading. In this matter, despite the fact that the Complainant's meter, upon being tested, it was found to be defective, such meter was replaced, bills were adjusted and the supplementary bill prepared and issued.

Based on the foregoing, it is our holding that, despite some confusion on the exact amount the Complainant owes the Respondent, we do not see any merits on the claims by the Complainant.

2. Issue No. 2: Whether the Respondent's bill of TZS 851,992.95 Against the Complainant is Justified

The Complainant counsel in his final submission argued that since the Complainant meter was defective, the units it produced or read were incorrect. The learned counsel for the Respondent tried to convince us that since the units used to calculate the amount of money to be paid are derived from the defective meter which was running faster by +11.141% therefore it is evident that the bills which were the product of the incorrect units are also incorrect. The correct units and correct charges started to count in April 2010 onwards and not before. On the basis of the foregoing,

the learned counsel for the Complainant requested EWURA to find the Respondent's claim of TZS 851,992.95 as unjustified and should not be allowed.

The Complainant's counsel further queried on the Average Uniting System as shown in the Respondent's Supplementary Account/final Account of January 2004 - December 2005; January 2006 - June 2006, July 2006 - December 2006 and January 2007 - March 2007 which shows an average monthly consumption of the Complainant at 170 units per month. The learned counsel for the Complainant questioned on how can the average units of 170 units per month be constant and without changing throughout the 16 months. He concluded by stating that the bills issued by the Respondent raises a big question mark and it is an indication that such bills were not worked out but guessed and transplanted.

The Complainant's counsel objected the Supplementary Account Final Account (Amended Bills) and the Amended Interest changes on the reason that the said document apart from the fact that it was not stamped and signed by the revenue accountant, it also shows the outstanding bills from January 2007 to May 2010 leaving out the year 2005 and 2006. In addition it included the period of March to May 2010 in which the Complainant was using LUKU meter.

On the other hand the Respondent's counsel alleges that the Complainant was properly billed during the whole period of the dispute. RW2 and RW3 both testified that the Complainant electricity consumption range on an average of 39-200 units per month depending with how he used power in a month. The Respondent's counsel stated in her closing submission that the disputed 170 units per month, was arrived at by computing the average units consumed by the Complainant for a period of four months before the start of the malfunctioning of the Complainant's meter.

During cross examination RW3 testified to the effect that due to defective meter they took the average consumption because the difference was in

percentage and his monthly consumption was known, the only problem was that, it was perceived to be too high in comparison with the consumption, hence they deducted 11.141 % on every month throughout the disputed period. RW3 stated that all bills which were issued were taken from the Respondent's system. RW3 further stated that, usually when they are charging using supplementary bills they use average, because it is not easy to know the exact bill in a month.

The Counsel for the Respondent argued, in her closing submission, to the effect that it is not fair to forfeit charging the unit that has been consumed by the customer regardless of who caused the error in recording or preparing the bill. As it can be seen in records the Complainant enjoyed the goods/services from the Respondent regardless of the defects in meter readings. The Respondent's counsel is of the view that the complaint is devoid of merits and should be dismissed with costs and the Respondent be further ordered to pay for the electricity that he has consumed.

This issue is almost answered by the arguments and reasoning we made when addressing issue number one. As we said before, it is no doubt that, the Complainant has consumed, albeit with a defective meter, power from the Respondent. It is also the Respondent's argument, which we are in agreement, that it is not easy to know the exact units consumed if there was an error in the meter. The best way of being fair is to deduct the percentage error in the bills, calculate the average units consumed and then prepare a supplementary bill. The alleged defective meter was tested and found to be reading at an error of +11.141% and thereafter a supplementary bill amounting to TZS 851,992.05 was prepared and issued.

It is the submission by the Respondent and which we agree that the calculations and computation on the Complainant bill in the disputed period between April 2007 and March 2010 was adjusted by deducting the +11.141 % error in each month. Furthermore, the average monthly consumption of the Complainant during that period was TZS14,073.60 totaling TZS 493,794.00 for the whole period. Prior to April 2007 the

Complainant was in arrears at the tune of TZS 358,198.05. When adding up the figures of the two periods we arrive at total TZS 851,992.95 which the Complaint owes the Respondent.

Conclusively, we have considered the arguments, testimonies and evidences and we are satisfied that the supplementary bill at the tune of TZS 851,992.05 which was issued by the Respondent to the Complainant is justified and that is our holding.

However, we are concerned about the Respondent's failure to discharge its duties diligently. It took quite a long time since the Complainant complained about his defective conventional meter until when the Respondent worked on it and replaced it with a LUKU meter. In addition we have observed that there were poor communication between the Complainant as the customer and the Respondent as the service provider. As the service provider, the Respondent is obliged to communicate and provide feedbacks to its customers on matters that affect their rights and obligations. In this area, the Respondent has taken over five years to work on the complaint (2005-2010) by the Complainant and we think this is a material breach of the Respondent's fundamental obligations as the service provider. We think the Complainant deserves some reliefs for this breach.

In addition the Respondent has shown some high degree of weakness in reading customer's meters as required by law and in following up the collection of revenues. The Respondent is reminded to always ensure that, it discharges its duties in accordance with the applicable laws, Client Service Charter and further treats its customers with courtesy and respect.

3. Issue No. 2: What Remedies are to the Parties

In his final submission the Complainant has prayed for the following reliefs:

- (a) that the complaint be allowed;
- (b) declaration that the Complainant does not owe the Respondent;

- (c) declaration that the Respondent's claims against the complainant are unjustified;
- (d) payment of TZS 3,600,000 as specific damages;
- (e) payment of interest at the current commercial rates of amount stated in (d) above from the year 2005 to the date of full payment;
- (f) cost be awarded to the Complainant ; and
- (g) any other relief the Authority may deem fit and just to grant.

Prayer numbers (a) to (c) above have been dealt with when we decided on issue number one and two. With regard to prayer number (d) and (e) above, it is a cardinal principle that specific damages should be strictly proved. Throughout the trial, the Complainant has never tried to prove any specific damage warranting this Authority to allow it. Therefore prayers number (d) and (e) above are equally denied.

However, we have considered the material breach by the Respondent in fulfilling its obligations in this matter. The Complainant has suffered without any justifiable reasons and there was poor communication and cooperation on part of the Respondent. Based on the foregoing, we have decided to award the Complainant a token compensation of TZS 200,000.00. With regard to costs, each party shall bear its own costs.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 14th day of September 2012.



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Mr. Haruna Masebu
Director General