

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

COMPLAINT NUMBER EWURA/33/1/125

BETWEEN

KAMAL STEELS LIMITED COMPLAINANT

VERSUS

**TANZANIA ELECTRIC SUPPLY
COMPANY LIMITED RESPONDENT**

AWARD

**(Made by the Board of Directors of EWURA at its 105th Extra Ordinary
Board Meeting held at Dar es Salaam on the 5th day of March 2013)**

1.0 Background Information

On 3rd October, 2011, M/s Kamal Steels Ltd ("the Complainant") lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") against Tanzania Electric Supply Company Limited ("TANESCO") ("the Respondent") claiming the sum of Tanzanian Shillings one billion fifty five million (TZS

1,055,000,000.00) for loss incurred as a result of irregular and interrupted power supply by the Respondent.

The Complainant is a foreign investment company registered in Tanzania engaged in manufacturing of construction steel, high quality oxygen and acetylates gases. The Complainant has been doing business in Tanzania for the past seven years. The Complainant claims that from May 2011 to September, 2011 they suffered loss as a result of interrupted and unscheduled power supply by the Respondent. The Complainant submitted that the procedure for making steel is such that the material is poured in the moulds once it has attained the temperature of 1600 degrees, the process usually takes around 2:15 hours.

However, when electricity is cut before the process completes, the metals cool down inside the induction furnace and it takes 8 hours to re-melt the same metal in the crucible, therefore consuming almost 4 times the amount of electricity that would have otherwise been consumed. The Complainant claims that as a result, they suffered huge losses in terms of production and electricity consumed. The Complainant's claim of TZS 1,055,000,000.00 is summarized as follows:

- (a) TZS 200,000,000.00 being additional bills paid by the Complainant to the Respondent;
- (b) TZS 500,000,000.00 being money for loss of 10 heats per month due to materials wasted;
- (c) TZS 250,000,000.00 for loss of profit and reputation;
- (d) TZS 30,000,000.00 being costs of fuel for the generator for five months; and

(e) TZS 75,000,000.00 being labour wages.

In addition, the Complainant claims that they contacted the Respondent, on several occasions, asking the Respondent to give them information on load shedding, but despite their promises they did not receive any schedule for the power cut. Furthermore, the Complainant submitted that the schedule was given by the Respondent but the said schedule was also not followed and as a result they suffered huge losses.

Following receipt of the complaint the Authority referred back the matter to the Respondent requesting them to consider it as per the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 and other applicable laws.

On 6th March, 2012, the Respondent informed the Authority that after carrying out their investigation, they realized that the Complainant is connected to line FZIII-I originating from Ubungo substation. The Respondent further stated that the period during which the Complainant is complaining to have power supply irregularities was characterised by load shedding all over the country due to deficit in generation of electricity due to drought conditions. The Respondent further stated that the time table of the load shedding was publicized to all customers through media (i.e. radio, television and newspapers), also an email was sent to all major customers, the Complainant inclusive. The Respondent claimed that the Complainant was fully made aware of the load shedding schedule and therefore they cannot honour their claims.

On 28th March, 2012 the Authority wrote to both parties inviting them for mediation that was to be held on 3rd May, 2012 with a view to settle the matter amicably between the parties. However, the Respondent did not show up for mediation. On 26th June, 2012 the Authority sent to the Respondent a Notice of Complaint and Summons to lodge a Reply to the Complaint. The notice ordered the Respondent to submit their written reply to the complaint together with all relevant documents they intend to rely on, in support of their defence, within twenty-one (21) days from the date of issue of the notice, failure of which their right to be heard will be waived.

Through a letter dated 12th July 2012, the Respondent requested the Authority for an extension of time to file their defence. The Authority granted an extension of time of seven (7) days from the date of receipt of its letter. Despite the request for the extension of time, the Respondent failed to submit its defence as ordered and therefore *ex-parte* hearing was scheduled for 6th November, 2012.

2.0 Hearing Stage

On 6th November, 2012, the matter came for *ex-parte* hearing and the Complainant was represented by Mr. Anand Vannay, the Complainant's Director and Mr. Sunil D. Deshpanda, an ERP Technician with the Complainant. During the hearing, Mr. Sunil D. Deshpanda stood as the only witness (CW). CW tendered various documents as exhibits. The following issues were raised for determination:

- (a) whether the Complainant has incurred loss as a result of interrupted and unscheduled power supply by the Respondent; and
- (b) what reliefs are the parties entitled to?

3.0 **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"), the EWURA (Consumer Complaints Handling Procedure) Rules, GN No. 30/2008. We have also considered the TANESCO Client Service Charter ("the Charter"), oral testimony of CW together with the tendered evidence and good electricity industry practices.

This is an *ex-parte* award which has been reached after the Respondent has failed to submit its reply to the complaint as required by Rule 5 (1) of GN No. 30/2008. Having said that, our decisions on the issues are as follows:

Issue No. 1: Whether the Complainant incurred loss as a result of interrupted and unscheduled power supply

It is not in dispute that the Complainant is a customer of the Respondent. It is also not in dispute that the alleged interrupted and unscheduled power supply to the Complainant occurred at the time when the nation was experiencing a nationwide load shedding. In a letter dated 6th March, 2012 the Respondent acknowledged that the alleged interrupted and unscheduled power supply occurred at the time when the nation was experiencing load shedding. This fact was

not disputed by the Complainant in his subsequent responses and during hearing.

The basis for the Complainant's claim is that no written notice on load shedding was served to them by the Respondent during the period between May 2011 and September, 2011 and as a result they suffered loss amounting to TZS 1,055,000,000.00. CW gave a brief testimony in which he tendered as evidence, the facts of losses, correspondences between the Complainant and the Respondent, production statement, statement of labour charges and statement of electricity charges and natural gas paid, which were admitted collectively as exhibit "C".

CW testified to the effect that during the period in dispute the Respondent used to announce the power cuts in the media but no official notice was issued to the Complainant. CW further testified that the Complainant being a foreign company they did not understand Kiswahili the language which was used by the Respondent in announcing the notice of power interruption.

It is a cardinal principle of law that "*he who alleges must prove*". From this cardinal principle, the Complainant has a duty to prove, on balance of probabilities, that there was unscheduled load shedding by the Respondent and as a result of the said unscheduled load shedding they (Complainant) suffered loss. The Complainant has tried to establish a case, to the effect that, had it not been to the negligence and carelessness of the Respondent, they (Complainant) would not have suffered the damages.

The major task ahead of us is to determine whether the Complainant has proved on the balance of probabilities that due to unscheduled

load shedding by the Respondent they have suffered damages. In finding the answer to the above we paid special attention to the brief testimony of CW and the contents of exhibit "C". While evaluating the testimony of CW and the contents of exhibit "C" we were mindful of the wording of his Lordship Masanche, J in the case of *the Manager NBC Tarime vs. Enock M. Chacha* [1993] TLR 228, where he held thus:

"It does not follow that since a party has been allowed to prove his case ex-parte, he can just casually go through his claims, in the hope that the court will readily grant the prayer. A party who proceeds to prove his case ex-parte must prove his case on the required standard of the law. Where the proof falls short of the required standard, the court must dismiss the case"

From the holding of Masanche, J above, the standard of proof in *ex-parte* cases is in the same level as that of *inter-parte* cases. In *ex-parte* cases, like this matter, the Complainant is required to prove its claims on the balance of probabilities. Considering the testimony of CW and the evidential weights of exhibit "C" can one conclude that, the Complainant has discharged the burden of proof to the required standard i.e. balance of probabilities? It is our considered opinion that the answer to the aforementioned question is in the negative due to the following reasons:

First, as said before, the testimony of CW was very brief and, it is our considered opinion that, the said testimony was not very helpful to us.

Secondly, the Charter provides for the different modes of communications in which the Respondent is obliged to use in order

to inform its customers during the events of scheduled and unscheduled power cuts. Paragraph 2 (b) of Part C of the Charter obliges the Respondent to notify its eligible customers like the Complainant in writing (either by a letter or an electronic mail) in the event of any scheduled power cuts. The contents of exhibit "C (26)" which is a letter dated 6th March, 2012 from the Respondent to the Authority, confirm that the Complainant was informed, via e-mail, by the Respondent about the ongoing load shedding.

Furthermore, the Complainant, through a letter dated 3rd October, 2011 (exhibit "C (9)", acknowledged to have received a schedule of load shedding which he claimed was not followed by the Respondent. Paragraph 4 of the letter reads "...initially the schedule which was given was also not followed and we have suffered huge losses because of the same."

Even if we hold that the Respondent failed to issue a written notice of load shedding to the Complainant as required by the Charter and thus the claims for damages, looking at the evidence tendered, can we say that the Complainant has proved its claims for the loss suffered? The type of losses the Complainant claim to have suffered is in the nature of extra payments made for electricity, natural gas and fuel costs and wages. In this type of claims, one would expect that, in order to establish its claims, the Complainant would submit receipts, invoices, electricity bills and an extract of the payroll.

The only evidence the Complainant has tendered is a list of correspondences between itself and the Respondent and Microsoft Excel sheets containing statements of fuel and gas costs and labour wages, all of which were prepared by themselves. It is our opinion

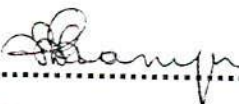
that in order for the statements submitted by the Complainant to have any evidential value, it was proper for the Complainant to corroborate them with other pieces of independent evidences like receipts, invoices, electricity and gas bills and extracts of the payroll. In this complaint it cannot be said that the scanty evidence adduced by the Complainant proves in any way what is alleged by the Complainant in the complaint form.

From the findings above, it is clear that the Complainant has failed to prove, albeit on the balance of probabilities, that he suffered loss as a result of failure by the Respondent to issue a load shedding notice.

Issue No. 2: What reliefs are the parties entitled to?

Having decided on the first issue in the negative, it follows therefore that, the complaint be, as it is hereby, dismissed with no order as to costs.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 5th day of March 2013.


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Miriam Mahanyu

SECRETARY TO THE BOARD