

THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

(EWURA)

COMPLAINT NUMBER EWURA/33/1/156

BETWEEN

MR. KIMONGE ORIYO..... COMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITED..... RESPONDENT

AWARD

**(Made by the Board of Directors of EWURA at its 105th Ordinary Meeting
held at Dar es Salaam on the 10th day of February 2016)**

1.0 Background Information

On 31st May 2012, the Energy and Water Utilities Regulatory Authority ("the Authority") received a complaint from Mr. Kimonge Oriyo ("the Complainant") complaining about the unjustified power disconnection by the Tanzania Electric Supply Company ("TANESCO") ("the Respondent"). The Complainant alleges that the Respondent disconnected power from his residence in Uru Area, Moshi Rural District ("the Premises") while he did not receive electricity bills and a breakdown of the said bills despite several follow ups made at the Respondent's offices. The Complainant alleges that the Respondent disconnected power at the premises claiming

that he had an outstanding debt of TZS 118,882 of which he was not aware. The Complainant alleges that on 5th April 2012, he was able to pay, under protest, TZS 100,000 as part payment of the outstanding bill with the assistance of the Respondent's Dar es Salaam Office and power was restored at the premises. The Complainant alleges that he paid the outstanding amount under protest pending receipt of the breakdown of the partly paid bill. The Complainant alleges that he received a breakdown of the bill on 5th July, 2012, which he disputed and therefore sought for further clarification on the breakdown which he has not received to-date. Consequently, the Complainant claims from the Respondent payment of TZS 10,536,000 being the costs incurred in the course of following up the complaint, general damages amounting to TZS 30,000,000 for inconvenience caused and any other relief as the Authority may deem appropriate.

Upon receipt of the complaint, the Authority wrote to the Respondent instructing them to present their reply to the complaint pursuant to Rule 5 (1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, GN No. 10/2013. The Respondent filed its defence on 5th July, 2012 in which they stated that power was disconnected due to non-payment of bills. The Respondent also admitted that there was poor communication between them and the Complainant.

Efforts to mediate the matter proved futile and the matter was referred to the Division of the Authority for hearing. Hearing of the matter took place on 26th March, 2013, 2nd May, 2013, 27th April, 2015 and 5th June, 2015.

2.0 Hearing Stage

On 26th March 2013, when the matter came for hearing the Complainant appeared in person whilst the Respondent was represented by learned counsel Ms Stella Rweikiza.

During hearing the following issues were framed for determination:

1. whether power disconnection by the Respondent was justified;
2. whether the Complainant suffered any damages as a result of the power disconnection; and
3. what reliefs are the parties entitled to, if any.

During the hearing, the Complainant Mr. Kimonge Oriyo stood as the only witness and he tendered various documents as exhibits. The Respondent failed to present its case on three different occasions when the matter was scheduled for hearing of the Respondent's case and thus we proceeded in making the decision without hearing from them.

3.0 **Decision**

In arriving to our decision, we have considered the relevant laws which include the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 ("the Act"); TANESCO's Customer Service Charter and the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, GN No. 10/2013. We have also considered the oral testimony of the Complainant together with the exhibits submitted by the Complainant, final submissions of the Complainant and good electricity industry practices.

Our decisions on the issues raised during hearing of the matter are as follows:

Issue No. 1: Whether power disconnection by the Respondent was justified?

The Complainant claims that the Respondent's act of disconnecting power at the premises was unjustified because he was not regularly served with his electricity bills as the law requires. The Complainant further argues that

even after he was served with his unpaid bills, he sought clarifications on the said bills which clarification was not given by the Respondent. The Complainant argued that he paid part of the outstanding bill in protest in order for power to be restored at his premises. The Complainant further argued that since the Respondent failed to provide clarification on the breakdown of the bill, they were not justified to disconnect power at the premises in absence of such clarification.

Reading from the facts of the case, it is clear that there was poor communication between the parties whereby the Complainant's electricity bills were sent through his Moshi address instead of the Dar es Salaam address. This fact was also admitted in the Respondent's defence letter dated 5th July, 2012. The Respondent admitted the fact that there was poor communication with the Complainant with regard to his bills. However, the Respondent maintained that power disconnection was legal as it was done due to non-payment of bills.

In determining this issue we evaluated the testimony of the Complainant (CW) and Paragraphs 4(b), 5(b) and 6(b) of the Respondent's Customer Service Charter. Paragraph 4(b) of the Customer Service Charter provides that every customer shall be required to pay his electricity bills within seven (7) days from the date of issue. The same provision requires that in the event that the Complainant has not received his bills by the last week of the month, he shall be required to follow up his on his bill with the Respondent. From the Complainant's letter of 18th April, 2012, it would seem that the Complainant received his accumulated bills on 23rd January, 2012 upon his first visit to the Respondent's Ilala Office. Power was disconnected at the premises until 10th March, 2012 for failure by the Complainant to pay such outstanding bill as per the requirements of the Customer Service Charter.

Section 5(b) of the Customer Service Charter gives the Respondent powers to disconnect the supply of electricity to the customer for failure to pay

electricity bills within fourteen days from the date of issue of the electricity bill. In this case although the complainant did not settle his bills upon receiving them, the Respondent did not promptly disconnect power and they waited until two months had passed.

The Complainant stated that he did not settle the outstanding bill due to the fact that the Respondent had not provided him with the breakdown of the bill. However, if you read Paragraph 6(b) of the Customer Service Charter the customer is liable to pay his electricity bills pending the conclusion of the ongoing investigations on any enquiry related to the bill which has been submitted to a licensee. Failure by the Complainant to settle the outstanding bill as required by the Customer Service Charter amounted to breach of his contractual obligation. We have further looked at Section 28(1) of the Electricity Act, and satisfy ourselves that a licensee may disconnect the supply of electricity to a customer who is in breach of his contractual obligation in respect of electricity supply. Additionally, we have considered the fact that the Respondent did not disconnect power at the premises until two months has passed after the Complainant had received his outstanding bill and failed to settle it. Under these circumstances we find it difficult to agree with the Complainant that power was unlawfully disconnected from the Complainant's premises.

Based on the foregoing we are satisfied that the Complainant has failed to discharge the burden, on balance of probabilities, to the effect that the power disconnection by the Respondent was unjustified.

Issue No. 2: Whether the Complainant suffered damages as a result of the power disconnection?

The Complainant claims for payment from the Respondent of TZS 10,536,000 being the costs he incurred in the course of following up this complaint, payment of general damages at the tune of TZS 30,000,000 for

inconvenience caused and any other relief as the Authority may deem appropriate to grant.

Since our decision in the first issue is in the negative to the effect that, the Respondent was justified in disconnecting power from the Complainant's premises, the Complainant's claim for compensation for costs incurred, damages and other consequential orders lacks the pillars to hinge on. Conclusively, our decision in this issue is in the negative to the effect that the Complainant suffered no damages or if such damages were suffered, the Respondent cannot be held responsible for it.

Issue No. 3: What remedies to the parties, if any?

Based on the foregoing and in the final analysis we have decided that the complaint be and is hereby dismissed with no orders as to costs.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 10th day of February, 2016.

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Felix Ngamlagosi
DIRECTOR GENERAL