

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

**COMPLAINT NUMBER: GA.71/135/138**

**MAADIA HAMISI ATHUMANI .....COMPLAINANT**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY  
COMPANY LIMITED..... RESPONDENT**

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**RULING**

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*(Made by the Board of Directors of EWURA at its 183<sup>rd</sup> Extra Ordinary Meeting  
held at Dar es Salaam on the 21<sup>st</sup> day of December, 2018)*

**1.0 Background Information**

On 20<sup>th</sup> July, 2017, Ms Maadia Hamisi Athumani ("the Complainant") filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against Tanzania Electricity Supply Company Limited ("the Respondent"). The Complainant claims for payment of TZS 60,000,000.00 as compensation for the damages done to her residential house located at Tumbi Ward in Kibaha District. The damage is a result of the fire outbreak at the complaint property alleged to be caused by an electric fault in the Respondent's supply system. The Complainant claims that her house was being supplied with power by the Respondent at the material time. The Complainant further claims for payment of TZS 4,000,000.00 being damages for the

disturbance caused by the fire accident, cost of the households items destroyed by fire, damages for mental disturbance as a result of the fire incident and cost of the complaint. From the pleadings, the Complainant alleges that on 10<sup>th</sup> April, 2016, there was a fire outbreak at her house located at Mkoani "A", Tumbi Ward in Kibaha District. The source of the fire is alleged to be an electric fault at the power supply system operated by the Respondent.

The Respondent on its part filed a defense denying any liability on the ground that the source of the fire that damaged the Complainant's house was not from the Respondent's infrastructure. It was further averred by the Respondent that the fire started inside the Complainant's house and the power supplied by the Respondent did not cause any electric fault.

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**

The matter was scheduled for hearing on 16<sup>th</sup> November, 2018 in Kibaha Municipality. During hearing, Mr. Frank Chundu, advocate appeared for the Complainant whilst the Respondent was represented by Ms. Batilda Mallya, learned advocate. During hearing, the Division of the Authority, *suo motto*, raised the issue of time limitation and required the parties to address the Division of the Authority on the matter. In addressing the issue, counsel for the Complainant started by invoking Rule 25(1) of the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2013 -Government Notice No. 10 of 2013, and conceded that every complaint instituted after the time of limitation (twelve months for this case) has no legs to stand. However, the Complainant's counsel submitted that the time of limitation

starts to run from the date the right of action accrues. According to the Complainant, the right of action accrued on 19<sup>th</sup> July 2016 when the Respondent through a letter with Ref. No. RM/COAST/CLAIMS/26 dated 19<sup>th</sup> July, 2016 denied any liability against the Complainant. The Complainant further alleges that the dispute was filed on 18<sup>th</sup> July, 2017 which is within one year hence the same is not time barred. Alternatively, the Complainant prayed that, in case the Authority finds the complaint was filed out of time, then it has to look into the fact that the Complainant could not file the dispute before getting a response from the Respondent. The Complainant also prayed the Authority to extend time and allow the proceedings to continue by virtue of Rule 28 of the EWURA (Consumer Complaints Settlement Procedure) Rules, 2013.

In reply to the Complainant's submissions, the Respondent's counsel submitted that the cause of action arose on the date of fire incident which is 10<sup>th</sup> April, 2016 and not the date the Complainant received a denial letter from the Respondent. The Respondent concluded her submissions by praying for the dismissal of the complaint for being time barred.

### **3.0 Decision**

We have gone through the submissions from both parties and it is not in dispute that the Complainant's house was destroyed by fire on 10<sup>th</sup> April, 2016. Thereafter, the Complainant lodged a claim to the Respondent who denied any responsibility by virtue of the letter dated 19<sup>th</sup> July, 2016. The Complainant alleges that the cause of action accrued on the date the Respondent denied liability and not the date of fire incident. By virtue of Rule 25(1) of the EWURA (Consumer Complaints Settlement Procedure) Rules, 2013, every complaint instituted after the period of limitation "*shall be dismissed whether or not limitation has been set up as defence*". For this particular complaint, the period of limitation is twelve months from the date the right of action accrued. The issue



now is when the right of action accrued and the same is well covered under Rule 26(1) of the EWURA (Consumer Complaints Settlement Procedure) Rules, 2013 which states thus;

*“(1) the period of limitation prescribed under these rules in relation to any proceeding shall commence from the date on which the right of action for such proceedings accrues.*

*(2) Subject to the provisions of these rules the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises.*

From the above cited provision, the right of action accrues on the date the cause of action arose. It is true that there were some correspondences between the parties after the fire incident. But considering the circumstances of the matter, such correspondences and the response thereof from the Respondent denying liability, in our view, could not give rise to a fresh right of action. Arguing by analogy, let us assume the Respondent would have taken two years to respond, could that also be considered as rising a fresh accrual of the right of action. In our view, the right of action arose on the very date the fire incident occurred. This position was well articulated by the High Court of Tanzania, Commercial Division- Dar es Salaam in the case of *Thornton & Turpin (T) Limited versus NIC (T) Limited and PSRC, Commercial Case No. 20 of 2002*. In this case, His Lordship Kalegeya, J. (as he then was) when faced with a similar issue of determining when the cause of action arose in respect of a motor vehicle insurance contract, His Lordship stated that *“the cause of action in this matter came into existence at the time when the insured vehicle got accident”*. The Judge went on to state that, the cause of action did not accrue when the Defendant *“took no heed”* of the demand notice issued. The Hon. Judge concluded his argument with the following interesting statement, *“legally, if a party lures another into believing that he is doing something towards settling a dispute whose cause of action has*

*already accrued; and that other lured party is bewitched by the allurements, and abstain from taking the necessary action, until he gets himself netted by the web of limitation of time, he cannot front the said allurements in his defence when a preliminary objection pegged on limitation of time is launched".* Similarly, both the cause and the right of action for the dispute at hand accrued on the date of fire incident which is 10<sup>th</sup> April, 2016. Computation of time for the purpose of time limitation needs to start on the date of incident and not the date the Respondent denied the claim.

Even if we rule otherwise that the cause of action arose on 19<sup>th</sup> July, 2016, this complaint will still be time barred. This is based on the reason that the complaint was filed on 20<sup>th</sup> July, 2017, two days after the expiry of one year counted from 19<sup>th</sup> July, 2017. The Complainant's allegation that the same was filed on 18<sup>th</sup> July, 2017 which was the last day for filing the same has no basis. Looking at the Complaint Form, the same is dated 18<sup>th</sup> July, 2017 but the actual filing was done on 20<sup>th</sup> July, 2017 as manifested by the Authority's receipt stamp of such date.

Maintaining our position that the cause of action arose on the date of incident, this complaint is time barred. The prayers by the Complainant counsel that the Authority exercises its mandate and extend the time so that the hearing can proceed, has no legal basis to stand. Power to extend the limitation of time is vested to the Board of Directors of EWURA as per Rule 29 of the EWURA (Consumer Complaint Settlement Procedure) Rules, 2013. In practice, such extension has to be done before the filing of the complaint and upon the application by the Complainant. In this case, the complaint has already been filed and the same set for hearing hence the application for extension of time at this stage is redundant.

Consequently, the complaint is hereby dismissed pursuant to Rule 25(1) of the EWURA (Consumer Complaints Settlement Procedure) Rules, 2013. Since the issue of time limitation was raised *suo motto* by the Division of the Authority, the dismissal is without an Order as to the cost.

**GIVEN UNDER SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 21<sup>st</sup> day of December, 2018.



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