

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

COMPLAINT NUMBER: GA.71/135/194

MICHAEL MAUSA MAKOICOMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 133rd Ordinary Meeting held
at Dar es Salaam on the 30th day of October, 2018*

1.0 Background Information:

On 19th of January, 2018, Mr. Michael Mause Makoi of Mkombole, Kibosho Ward in Moshi Rural District, Kilimanjaro Region, ("the Complainant") lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") against the Tanzania Electric Supply Company Limited, ("TANESCO") ("the Respondent"). The Complainant who runs a grain milling business filed this complaint and prayed for orders against the Respondent for payment of both special and general damages amounting to TZS 40,000,000.00 suffered as a result of the Respondent's negligence in failure to provide electricity supply services for four consecutive months. The particulars of the claim are set out in the subsequent parts of this award.

The Complainant states that he is a customer of the Respondent and he is connected to a three phase line as he operates a milling business at the area mentioned above. The Complainant states that on 22nd May, 2017, there was power blackout in the area where the Complainant operates. The Complainant reported the disconnection to the Respondent on 27th May, 2017 and the next day that is 28th May, 2017 and the Respondent restored power to other users but not to the Complainant. As a result of the failure/refusal by the Respondent to restore to the Complainant, the latter was not able to operate his milling business and hence loss of business. The Complainant further states that he continued to follow up the matter with the Respondent but the service was neither restored nor was he told what the problem was. The Complainant claims that on 8th September, 2017 power was restored and the Complainant was able to continue with milling business after four months of suspension. The Complainant states that he vainly claimed for compensation from the Respondent hence filed this complaint to the Authority for determination.

Upon receipt of the Complaint, the Authority ordered the Respondent to file a reply/defence to the Complainant's claims via a summons to file defence issued on 26th January, 2018. The Respondent filed its reply on 6th February, 2018 and acknowledged that there was a technical break down at the substation which supplies power to various customers including the Complainant. The Respondent further states that given the nature of the break down it took them until 18th July, 2017 to restore power in three phases to the area. Efforts to mediate the parties did not merit thus the matter was referred to the Division for hearing.

2.0 Hearing Stage:

During hearing which commenced on 16th to 17th of April, 2018, the Complainant appeared in person whereas the Respondent was represented by Mr. Karonda Kibamba, learned advocate and the Principal Legal Officer of the Respondent in charge of the Northern Zone. The following issues were framed for determination:

- 1) whether the Respondent had a duty to provide notice to the Complainant with regard to the nature and extent of the break down which had led to suspension of electricity supply services to the Complainant;
- 2) whether the Respondent was negligent in failing to restore the services for up to four months;
- 3) whether the Respondent is consequently responsible for the loss suffered by the Complainant; and
- 4) what remedies if any, are the parties entitled to?

At the hearing the Complainant stood as the only Complainant's witness "CW" and tendered several exhibits namely the letter dated 27th July, 2017 addressed to the Respondent as exhibit "C1", the reply letter from the Respondent dated 28th July, 2017 as exhibit "C2", the demand notice dated 12th August, 2017 as exhibit "C3", fourteen photographs taken at the scene as exhibit "C4", four employment contracts as exhibit "C5", an undated Lease Agreement as exhibit "C6" and a tax payment receipt as exhibit "C7".

The Respondent called one witness one Macmillan Stanley Kileo, who is the Electrical Technician as "RW" and tendered three exhibits namely the Emergency Maintenance Report which was admitted as exhibit "R1", the letter from the Regional to the Zonal Manager of the Respondent to the Complainant which was admitted as exhibit "R2" and a letter in reply to the Complainant's demand notice which was admitted as exhibit "R3".

3.0 **The 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 Electricity (General) Regulations Government Notice number 63/2011, the EWURA (Complaints Handling Procedure) Rules, GN 10/2013, and the Electricity (Supply Services) Rules, GN 4/2017. We have also considered the oral testimony of the witnesses together with documentary evidence tendered during the proceedings as well as written submissions of the parties. Our decision on the issues raised is as follows:

- 1) ***Whether the Respondent had a duty to provide notice to the Complainant with regard to the nature and extent of the break down which had led to suspension of electricity supply services to the Complainant***

In his testimony CW1 stated that when power failure occurred on the 22nd of May 2017 he was the one who reported the incident to the Respondent and was given the Technical Breakdown Number 3346. CW1 continued testifying further that the Respondent attended the breakdown the next day and power was restored in two phase lines. However, the power was not restored to his business as it required three phase capacity to run the mills. CW1 continues that he was not informed thereafter why power was not restored. CW1 testified that he inquired by phone calls but was told that the Respondent's technicians were working on the problem. On 27th July, 2017, two months after the breakdown occurred the Complainant wrote a letter to the Respondent asking for restoration of service. The letter which was tendered and admitted as "exhibit C1" was responded to by the Respondent the next day i.e. 28th July, 2017 by the letter which was tendered and admitted as "exhibit C2". The Respondent in its reply briefly stated that they were working on the matter and that the Complainant will be informed in due course on the steps taken to alleviate the problem. We dare to say that this happened two months after the breakdown had

occurred and yet the Complainant was not informed about the nature of the breakdown or how long it will take to address the matter. Further, to that CW1 made yet another attempt by sending a demand notice to the Respondent dated 12th August, 2017 which was tendered and admitted as "exhibit C3" asking for the restoration of service and payment of compensation for the loss suffered. The demand note was replied by the letter dated 15th November, 2017, which was tendered and admitted as "exhibit R3". In the said letter the Respondent for the first time stated that the underlying problem was the failure of the transformer/ substation to work properly and that the said problem has been dealt with and resolved. We minded ourselves that indeed the problem ended on 8th September, 2017 when another transformer was installed and the existing one removed. Both CW1 and RW1 confirmed the same. This means that the Complainant was informed about the problem two months after it was resolved and six months from when it occurred.

We have gone through the provisions of the law to see whether the Respondent had an obligation to provide notice to customers in the events of power failure. Rule 45 of the Electricity (Supply Operations) Rules, GN.4/2017 provides and we quote:

(1) A licensee shall, when intending to carry out preventive maintenance, replacement, restoration or any other construction that may lead to an interruption or reduction of transmission services, issue a public notice thereof, not less than two days prior to undertaking such activity.

(2) The notice described in sub-rule (1) shall include date and hour of service interruption, the date and hour of intended restoration.

The wording under Rule 45 cited above are very clear and indeed the Respondent was and is under obligation to issue notices to its customers in the event of power outages due to planned preventive maintenance, replacement or restoration of services. Furthermore Rule 44 of the above

cited Rules provides an obligation on part of the Respondent to notify the Authority in the event of service interruptions due to emergency repairs, rehabilitation or preventive maintenance that affects supply of services for more than 24 hours. For avoidance of doubts we quote the relevant provision hereunder:

“44. A licensee shall notify the Authority in writing in the event of a service interruption for emergency repair, rehabilitation or preventive maintenance that affects supply services for more than 24 hours.”

This obligation is also provided for under Paragraph C.2 of the Respondent's Customer Service Charter Revised Edition, 2013 which provides that customers must be informed of the reasons for unplanned power interruption within 24 hours. The provisions of Rule 44 above when read together with paragraph C.2 of the Customer Service Charter impose an obligation on the Respondent to provide notice to the Authority and to customers regarding unplanned or emergence maintenances which may cause power suspension for over 24 hours. The Respondent failed to prove that they notified the customers/Complainant or the Authority about the suspension of power supply. During cross examination CW1 was asked how a notification would have helped him and he replied that if he had been well informed he would have taken measures to mitigate loss by terminating employees, renegotiating the lease agreement and applying for tax relief for the period he was out of business. This submission apart from the legal obligations on part of the Respondent was very appealing to us and made a lot of sense. Since the Complainant was kept in the dark about the nature and extent of the problem he could not take mitigating measures to reduce his losses.

We are therefore of the view and we hereby hold that the Respondent was and indeed is still under legal obligation to provide notice of service interruptions to the Complainant.

2) ***Whether the Respondent was negligent in failing to restore the services up to four months***

The Complainant claims that the Respondent was negligent in failing to restore power supply to his business for a period of almost four months despite his frequent inquiries and follow-ups. On their part the Respondent explained through RW1 that they made every effort in restoring power to the Complainant as early as possible. In the reply to the complaint the Respondent informed the Authority that power had been restored to the Complainant on 18th July, 2017, but during his testimony RW1 said power was restored in September after a different transformer was installed. RW1 stated during hearing that they promptly responded to the report filed by the Complainant and were able to restore power to other users. RW1 stated that they discovered that one phase had failed completely and the only way to restore power to three phase users was by replacement of the transformer. RW1 further explained that they had no transformers of the required capacity in store and therefore they had to request it from the head office in Dar es Salaam.

RW1 testified to the effect that meantime they tried to connect the Complainant to the nearest transformer about one and a half kilometers away but they were unable to meet the cost of construction of the line. RW1 further testified to the effect that the efforts to get another transformer from the head office proved futile therefore they had to resort to option number three which was to exchange the existing transformer with another one from a different area. RW1 stated that they obtained a transformer of the required capacity from Kahe Area where there were no three phase customers. RW1 stated that they exchanged the transformer from Kahe Area with the transformer in question and thereby ending the four months power woes of the Complainant. We have considered the Respondent's actions in relation to Section 26(2) (a) of the Electricity Act, which obliges the licensee to ensure that the suspension of electricity supply services be as brief as possible.

As per the above cited provision the suspension of electricity supply services for any reasons mentioned under subsection (1) of section 26 of the Electricity Act which include conducting scheduled or unscheduled maintenance should be as brief as possible. The account of events in this matter shows that there was a lapse of time from when the Respondent attended the matter for the first time to the date when they power was restored. In this era of ICT development it should take few minutes to know whether the required transformer was available in stock at the head office of the Respondent. We are of the view that the period lapsed in attending the matter is unjustifiably significant and unacceptable. We therefore decide that the Respondent was negligent and in violation of section 26(2) (a) of the Act for failure to keep the suspension of electricity supply services as brief as required by the law.

3) ***Whether the Respondent is consequently responsible for the loss suffered by the Complainant***

The Complainant filed this complaint claiming for compensation and general damages amounting to TZS 40,000,000.00. The Complainant claims that he suffered specific damages in terms of losses such as payment of salaries to four employees at the amount of TZS 1,200,000.00, payment of taxes at TZS 1,000,000.00, payment of rent for four months at TZS 2,400,000.00 and loss of revenue at TZS 4,200,000.00. The Complainant further claims to have suffered psychological torture embarrassment and disturbance and therefore prayed for TZS 31,000,000.00 as general damages. The Respondent disputed all these losses arguing that they are baseless and that there is no legal duty to compensate customers for financial loss caused by power failure. The Respondent further challenged the authenticity of the documentary evidence tendered to support these claims.

Having held in the affirmative in the first and second issue herein, we therefore conclusively hold that the Respondent is responsible for the Complainant's loss which was a result of the Respondent's negligence.

4) ***What remedies if any, are the parties entitled to?***

Complainant prayed for special damages which include payment of salaries to four employees at the amount of TZS 1,200,000.00, payment of taxes at TZS 1,000,000.00, payment of rent for four months at TZS 2,400,000.00 and loss of revenue at TZS 4,200,000.00. The Complainant further claims to have suffered psychological torture, embarrassment and disturbance and therefore prayed for TZS 31,000,000.00 as general damages. The Respondent on the other hand prayed for dismissal of the Complaint for lack of merit. The Complainant's special claims are as set out below:

- (a) payment of salaries, TZS 300,000.00 for four employees for four months which totals 1,200,000.00;
- (b) rent of the premises TZS 600,000.00 per month for four months, which totals 2,400,000.00;
- (c) TZS 1,000,000 for tax as assessed by TRA for the year 2017; and
- (d) family suffered lost revenue at the average rate of 35,000.00 per day for four months totaling TZS 4,200,000.00

With regard to the claim for employees' salaries, the Complainant submitted that he was unable to suspend or terminate his employees since he was unable to predict when power would be restored for him to resume his operations. Consequently he continued to pay them salaries for four months without work. CW tendered four employment contracts for four employees which were admitted as exhibit "C5" which showed all employees were employed on a same salary of TZS 300,000.00 per month. The Complainant further tendered tax payments receipt for the sum of TZS 1,000,000.00 for the year 2017 which was admitted as exhibit "C7". Although there was no contention regarding the authenticity of the

documents, the Authority is of the view that since the tax assessment was intended for the entire year 2017, the same should therefore be apportioned to allow only a one quarter which is what the Complainant did not operate his business. We therefore allow full amount in item (a) that is TZS 1,200,000.00 and only TZS 250,000.00 in relation to item (c) of the Complainant's claims.

Item (b) of the claim relates to renting costs. The Complainant alleges that he continued to pay rent for the premises where the milling machines are installed as well as for the accommodation of his employees for four months without work. CW tendered a lease agreement which was admitted as exhibit "C6". The said lease agreement was strongly disputed by the Respondent's counsel on cross examination and we are inclined to agree with the Respondent counsel's submission that the said lease agreement is tainted with a lot of discrepancies and inconsistencies. Some of the discrepancies include lack of the original document, absence of the date of execution, inconsistency on the name of the landlord and the presence of hand written details on top of printed ones. Based on those discrepancies we disallow the claim relating to rent in item (b).

The Complainant did not provide proof of item (d) which relates to the loss of revenue. The Complainant was unable to submit books of accounts or any records of revenue collected on daily basis to enable us to determine the exact amount to be paid as loss of revenue. Consequently this claim is also disallowed. In addition to special damages the Complainant prayed for general damages for the psychological torture he endured during the whole period he remained without power at the tune up to TZS 31,000,000.00. We have considered this claim and based on our decision on other issues we are inclined to award as we hereby do, award the Complainant TZS 2,000,000.00 as general damages for the psychological torture, embarrassment and disturbance suffered. The Respondent will therefore pay to the Complainant the total of TZS 3,450,000.00 as both

special and general damages in cash. The Complainant is awarded the costs of the complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dar es Salam this 30th day of October, 2018.



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NZINYANGWA E. MCHANY
DIRECTOR GENERAL