

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

COMPLAINT NUMBER: EWURA/33/1/374

BETWEEN

MS MWANAHENZI AHMAD ALLY MUSACOMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITED.....RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 124th Meeting held at Dar es
Salaam on the 15th day of December 2017)*

1.0 Background Information

On 25th January, 2016, the Energy and Water Utilities Regulatory Authority (“the Authority”) received a complaint from Ms Mwanahenzi Ahmad Ally Musa (“the Complainant”) complaining about the fire that destroyed their family house located at Kipala Mpakani at Mkuranga District in Coast Region (“the premises”). The Complainant alleges that the fire that destroyed the premises was due to an electrical fault caused by the Tanzania Electric Supply Company Limited (“TANESCO”) (“the Respondent”). The Complainant stated that on 6th June 2014 the premises was destroyed by the fire alleged to have been caused by electric short started from the bracket which, three days before the incident,

was repaired by the Respondent's employees. The Complainant claims for the payment of TZS 102,950,000.00 being the value of the premises and the domestic appliances which were destroyed by fire.

The Respondent on its part claims that they are not responsible for the said fire because the investigation that was conducted by them revealed that electrical infrastructure which supplies power to the premises was intact and in good order on the day of incident. The Respondent further alleges that the electric line that supplies power to the premises also supplies power to other customers; and if there was a fault on that supply line other customers would have been affected as well. The Respondent concluded their defense by stating that the fire that destroyed the premises started at one of the rooms far away from where the meter was installed.

Efforts to mediate the parties under the supervision of the Complaints Unit of the Authority were taken but proved futile. The matter was referred to the Division of the Authority for hearing.

2.0 Hearing Stage

Hearing of the complaints started on 27th October 2016 and the Complainant appeared in person while the Respondent was represented by Ms Batilda Mally. The following issues were framed for determination:

- (a) what was the source of fire;
- (b) whether either party was negligent in this matter; and
- (c) what reliefs the parties are entitled to?

During hearing, the Complainant brought four witnesses namely Ahmad Ally who stood as the first witness (CW1), Time Saidi Mussa who stood as second

witness (CW2), Jumanne Selemani stood as the third witness (CW3) and Yusuf Hassan stood as the fourth witness (CW4). On the other hand the Respondent brought three witnesses, namely Mr. Frank Rwehabura the first witness (RW1), Mr. Nassoro Said Mwakamzue the second witness (RW2) and Eng. Dr. Majige Mabula as the third witness (RW3). Both parties tendered various documents as exhibits.

3.0 **Decision**

In arriving to our decision, we have considered the applicable laws which include the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 ("the Act") and the EWURA (Complaints Handling Procedure) Rules, GN No. 10/2013. We have also considered oral testimonies of witnesses together with the exhibits, closing submissions and good electricity industry practices. Our decisions on the issues raised by the parties are as follows:

Issue No. 1: What was the source of fire

It is not in dispute that the Complainant's house caught fire on 24th July 2014 and it is further not in dispute that as a result of the said fire, the Complainant's house was extensively damaged as well as the properties contained therein. Due to lapse of time since the incident took place till when the matter came for hearing and taking into consideration the fact that the Complainant has refurnished his premise and most of the evidences have been destroyed or altered; site visit was not conducted during hearing.

CW1 testified that the source of fire that gutted the Complainant's house was electricity short circuit that occurred at the Respondent's infrastructure. CW1 stated that on the fateful day the problem started with the bracket and then proceeded to the meter. CW1 testified to the effect that after observing such

problem they informed the Respondent who sent its officials to fix the problem. CW1 stated that after four days from the day the problem at the bracket was repaired there was a short circuit, which led the fire incident. CW1 stated that on the fateful day, there was power fluctuation and it used to go on and off. The fire and rescue team was called but they arrived late and found the house gutted. CW1 concluded his testimony by stating that he did not receive a response from the Respondent on what was the source of the fire. The only response he received from the Respondent was that they were not responsible for the fire. CW1 tendered exhibits "C1", "C2" and "C3" which are the letters he wrote to the Respondent, photographs taken at the premises following the fire incident and the list showing the value of the destroyed items, respectively.

CW2 testified that on the fateful day that following a short circuit at the bracket of the premises, there were some sparks at the lead-in-wire to the premises. CW2 stated that before the fire incident they reported to the Respondent about the problems in the power system at premises but the Respondent did not take serious measures in addressing it. CW2 stated few days before the incident she saw the Respondent's staff dealing with emergency, told them about the problem and they looked at the bracket and did something there and left. CW2 stated that three days after the Respondent's staff has repaired the bracket at the premises, fire broke out at 14:00hrs and the premises was severely damaged. CW2 stated that on the fateful day, power was out and when it came back, it came with high voltage and thus causing the fire that destroyed the premises.

CW3 stated that the source of fire that destroyed the premises was electricity supplied by the Respondent. CW3 stated that on 6th June 2014 at around 2-2:30pm he was sitting near the lemon tree with his colleagues. CW3 stated that power was out on that fateful day and when it came back, he saw the fire near the meter and the main switch at the premises because they are close to each

other. CW3 moved close to the area and he saw the fire and it spread. CW3 stated that as a result of the fire one side of the house was damaged and the other side remained standing. When cross examined by the Respondent's counsel on which part of the house was extensively damaged, CW3 responded by saying that it was at the rear part of the house which was damaged the most.

CW4 testified that, on 6th June 2014, at around 2pm while he was inside the Complainant's house at the sitting room, he saw fire at the meter and after that he went outside and shouted for help. CW4 stated after shouting for help, good Samaritans came trying to get household items out of the house and called the Fire and Rescue Department. CW4 stated that officers from the Fire and Rescue Department took a long time to get to the premises and by the time they arrived the premises was massively damaged. When cross examine by Respondent's counsel on what was the source of fire, CW4 stated that the fire started at the electric pole from the outside and spread to the premises.

The Respondent disputed any liability on the matter by stating that the Complaint has failed to establish, on balance of probabilities, on what was the source of the fire that destroyed his house. RW1, who went to the scene immediately after the incident, testified that he find the premises still burning by the time he arrived there. RW1 testified to the effect that after arriving to the scene he started investigating on the possible cause of the fire. RW1 further stated that at the scene he finds that the wires from the switch were not in conduit pipes. RW1 also noticed that there were extra rooms that seem to have been added which were not there in the original sketch submitted to the Respondent. RW1 concluded his testimony by stating that from the bracket the wires were intact and from bracket to the meter the wire was fine by 90% but 10% of the wire was burnt due to the effect of the burnt wood. As per the testimony of RW1, the fire that destroyed the premises must have started in one of the rooms at the premises.

RW2 testified that he went to the scene of incident immediately and disconnected power at the pole and bracket. RW2 testified to the effect that at the scene he finds that the pole supplying power to the premises was intact as well as the bracket and he therefore concluded that problem started inside the premises and not from the bracket. RW3 testified that there was no relationship between the fire and electrical infrastructure of the Respondent because the latter's infrastructure was unaffected. However, he was unable to conduct an in depth investigation to find the cause of fire since the incident had happened long time ago and the scene had been contaminated and altered.

We have examined all the testimonies and evidences tendered by the parties together with their submissions and we are very thankful for such submission. From the outset it is clear that due to the lapse of time from the time the incident occurred (24th June 2014) and when the matter came for hearing in 2016; most of the evidence at the scene must have been contaminated or altered.

Normally source of fire can be established either by, eye witness (direct evidence), circumstantial evidence or expert evidence. CW1, CW2, CW3 and CW4 were all at the scene of the incident. As per section 62(1)(a) of the Evidence Act, Cap. 6 of the laws of Tanzania, the evidence of CW1, CW2, CW3 and CW4 is primary and direct evidence because it is given by the persons who saw the incident. CW3 and CW4 gave somewhat similar testimonies on where they saw the fire to have started while CW1 and CW2 gave a different version. CW3 stated that he saw the fire near the meter and the main switch while CW4 stated that he saw the fire at the meter. On other hand CW2 alleged that he saw sparks at the lead-in-wire while CW1 stated that there was short circuit on that day which led to the incident. With such disparities of the Complainant's witnesses' testimonies it poses a lot of question on where exactly did the fire started. The fire report stated that the fire started at one of the tenant's room.

The fire report corroborates the testimony of CW3 who stated, during cross examination by the Respondent counsel, that the fire started at the back of the house.

We have also examined the testimonies of RW1, RW2 and RW3 who went to the scene of incident after the fire outbreak. They all stated that the Respondent cannot be held liable because its infrastructure was found intact and the internal wiring system was not done properly; and thus it may have contributed to the fire outbreak. RW3 further testified that the fire outbreak could have been resulted by any other source within the premises. As we have said before, quite the lapse of time from when the incident happened to the time hearing was held, makes it difficult to get and evaluate the evidence from the scene. It is our considered opinion that the source of fire, apart from the alleged sparks or short circuit depends on assessing and evaluation the evidence from the *locus in quo*. Since we have said that most of the evidences at the *locus in quo* were either destroyed or removed from the *locus in quo*, we are unable to find the source of fire.

Based on the foregoing, it is clear that the Complainant has failed to prove on the balance of probabilities that, the source of fire that destroyed the complaint premises was an electric fault caused by the Respondent.

Issue No. 2: Whether any party was negligent in this matter

In determining if either party was negligence, the burden of proof lies with the party who alleges the other to be negligent. The standard of proof is on balance of probabilities. In order to find a party negligent, one has to establish that there was a duty of care, that duty was breached, and because of the breach, factual loss or damage has occurred.

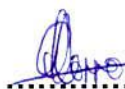
Since we were unable to find the source of fire when deciding on issue number one, it is difficult to find either party liable for negligence in this matter, and that is our decision.

Issue No. 3: What reliefs are the parties entitled to?

The Complainant claims for payment of TZS 102,950,000.00 being the value of the premises and the domestic appliances that were destroyed by the fire. The Respondent on its part prays for the dismissal of the complaint with costs. The fundamental principle by which the courts are guided in awarding damages is "*restitutio in integrum*", which means that the law will endeavor, so far as money can do it, to place the injured person in the same situation as before. Since we have not been able to establish the source of fire and the Complainant has failed to prove the Respondent's negligence, the above stated principle will not apply in this matter. Whereas we sympathize with the Complainant for the loss suffered, we are unable to attribute the said loss to the Respondent.

Since the Complainant has failed to prove, on balance of probabilities, that the Respondent was responsible for the fire that destroyed the premises we cannot hold, the latter, liable for negligence. Based on the foregoing and in the final analysis our holding is to the effect that the complaint be, as it 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 15th day of December 2017.



GERMANA QORRO
SECRETARY TO THE BOARD