

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

**COMPLAINT NUMBER: GA.71/309/88**

**BETWEEN**

**ORYX GAS TANZANIA LTD..... COMPLAINANT**

**VERSUS**

**SIMON PETER BAJUTA..... RESPONDENT**

**AWARD**

*(Made by the Board of Directors of EWURA at its 130<sup>th</sup> Ordinary Meeting held at  
Dar es Salaam on the 27<sup>th</sup> day of July 2018)*

**1.0 Background Information**

On 7<sup>th</sup> February, 2018, M/s Oryx Gas (T) Limited represented by Jennifer Mosha of Moshi, Kilimanjaro ("the Complainant") lodged a complaint to the Energy and Water Utilities Regulatory Authority ("the Authority") against Mr. Simon Peter Bajuta of Bomang'ombe Area, in Hai District ("the Respondent"). The Complainant is complaining about the Respondent's act of storage, selling and distribution of illegally refilled Oryx LPG cylinders with LPG products from other brands at his premises located at Bomangombe Kengereka Street in Kilimanjaro Region. The Complainant further claims that the Respondent after he has refilled the said cylinders he stores, distributes and sell the same with Oryx Gas brand and thus violating Rules 35,40,42,49,50 and 51 of the Petroleum (Liquefied Petroleum Gas) Rules, GN No. 420/2012.

The Complainant alleges that the practice by the Respondent of illegally refilling LPG cylinders with the brand name of Oryx Gas Ltd affects them, as cylinder owners, in a grave way. The Complainant alleges that the acts by the Respondent causes a lot of damages to the Complainant's business

and reputation as they illegally refill, distribute and sell LPG by using Complainant's cylinders. The quality, standard and quantity of LPG in the cylinders illegally refilled cannot be verified and that put a dent to the Complainant's reputation in the market. Consequently, the Complainant prays for issuance of a Compliance Order restraining the Respondent from continuing with the violation, a warning letter to the Respondent and any other relief that the Authority may deem fit to grant.

Upon receipt of the complaint, on 20<sup>th</sup> February 2018, the Authority ordered the Respondent to file a reply to the complaint pursuant to the provisions of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, Government Notice No. 10/2013. The Respondent was reluctant to receive summons and requested the summons to be delivered to his advocate. Still the Respondent did not file the reply to the complaint for reasons best known to themselves and thus, the Division of the Authority decided to hear the matter *ex-parte*.

## **2.0 Hearing Stage**

On 24<sup>th</sup> May 2018, the matter was called for hearing and the Complainant was represented by Mr. Edgar Mosha, learned advocate. The following issues were framed for determination:

- (a) whether the Respondent conduct of LPG operations at Kengereka Street Bomang'ombe Area violates the laws governing operations of LPG business; and
- (b) what remedies are the parties are entitled to?

During hearing, Mr. Baraka Mohamed, the Complainant's Sales Representative for Arusha and Kilimanjaro Regions stood as the first witness for the Complainant (CW1) and Ms. Lilian David the Complainant's super dealer in Kilimanjaro Region stood as the second witness for the Complainant (CW2).

### 3.0 **Decision**

In arriving at our decision, we have considered the applicable law including the EWURA Act Cap. 414, the Petroleum Act Cap 392, the Petroleum (Liquefied Petroleum Gas) Rules, GN. No. 420 of 2012 ("the LPG Rules") and the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2013 (GN No. 10/2013). We have also examined the oral testimony of the witnesses together with the tendered evidence and exhibits. Our decisions on the issues raised during hearing of the matter are as follows:

#### **Issue No. 1: Whether the Respondent conduct of LPG operations at Kengereka Street Bomang'ombe violate the laws Governing operations of LPG business**

It is trite law that he who alleges must prove and in this matter the Complainant is duty bound to prove, on the balance of probabilities, that indeed the alleged conduct by the Respondent violated the laws. CW1 testified that the Respondent is doing LPG retail business but he does business with neither Oryx Gas (T) Limited nor Oryx Gas Super Dealers. The Complainant has only two super dealers at Bomang'ombe area who can supply Oryx Gas Cylinders to retailers. The Complainant found the Respondent selling Oryx Gas Cylinders which are not supplied by any of the known super dealer recognized by the Complainant.

CW1 further testified that the Oryx Cylinders sold/offered for sale by the Respondent are from the Oryx Cylinders supplied by the Complainant. The difference is on weight, as their cylinder have less weight than ORYX Gas cylinders and their respective seals are different from the one supplied by Oryx Gas (T) Ltd. CW1 stated that one day they inspected the Respondent's premises and found Oryx Gas cylinders sold by the Respondent with seals that are different from the seals of the Complainant. CW1 tendered pictures showing seals and cylinders that are sold by the respondent which were admitted by the Division for Identification purposes ("ID").

CW1 when asked by the Division if they found any machine for gas filling, CW1 replied by saying no. When CW1 was further asked as how did they know that the Respondent was refilling Oryx gas cylinders, replied by stating that the presence of different seals from the one issued by the Complainant is sufficient to explain that the Respondent is doing illegal refilling.

On other hand CW2 testified that she usually keeps record of the volume of sales for each area, and of recent she found that volumes for Bomang'ombe area have been dropping drastically. CW2 testifies that the Complainant's prices for LPG cylinders of 6kg is TZS 17000, while the Respondent sells at a reduced price of TZS 15,000. CW2 stated that she visited about twenty customers and all of them stated that they buy their LPG products from the Respondent at a lower price. CW2 alleges that the Complainant's current seals have marks which show zones. When interrogated, the Respondent told CW2 that he was being supplied with LPG products from Clock Tower Petrol Station, however, he failed to produce receipts to support his statement. CW2 stated that she went to Hai Police Station to report the matter and with the assistance from the Police they went to the Respondent's premises and took all the cylinders including the ones which were demo and those from the store and send them to the Complainant's depot.

We have considered the argument of the witnesses of the Complainant and the tendered exhibits plus the observation and findings we made at the locus in quo conducted on 24<sup>th</sup> May 2018. From the testimonies of CW1 and CW2, Exhibit "ID" and findings from the site visit there is no doubt that the Respondent was conducting LPG business illegally and in a manner that is contrary to health safety and environmental requirement which poses danger to the public. Presence of fake seals at the Respondent's premises, in absence of any other explanation indicates, on balance of probabilities, that there are illegal refilling activities taking place in the premise. The Complainant having no any dealership agreement with the Respondent

and in absence of any exhibit from the Respondent to show that he was authorized either by the Authority or the Complainant, we are inclined to hold that refilling by the Respondent is done illegally. Rule 42 (1) - (4) of the LPG Rules prohibit transfer of LPG from one cylinder to another unless authorized by the Authority and such act to be done at a refilling center.

Therefore, our decision to the first issue is in the affirmative to the effect that the conduct of LPG operations by the Respondent at Kengereka Street Bomang'ombe area violate the laws governing operations of LPG business.

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

The Complainant prayed for the following reliefs to the Authority namely:

- (a) issuance of severe warning to the Respondent for violation of the law;
- (b) issuance of Compliance Order restraining the Respondent from continuing violating the law;
- (c) payment of general damages to the Complainant;
- (d) order the Respondent to remedy the above violation; and
- (e) any other relief the Authority mad deem fit and appropriate.

From the outset we have observed, with great dismay, that the Respondent was not only undertaking a regulated activity in a manner that is detrimental to HSE requirements but also he did so without a licence from EWURA. Section 131 (4) of the Petroleum Act, Cap. 392, makes it an offence the conducting of a regulated activity (refilling, storing, distributing and selling of LPG inclusive) without a licence from EWURA. The penalty provided thereunder is a fine not less than twenty million shillings. Consequently, we hereby order the Respondent to pay a fine, to the Authority, amounting to twenty million shillings for conducting a regulated activity without a licence.

Our decision in the first issue is to the effect that the Respondent has violated the law and conducted LPG business illegally and in a manner that is contrary to HSE requirements. In view of the above, the Respondent is



restrained from continued undertaking LPG business until licensed by EWURA.

The Complainant claims for payment of general damages for the loss suffered as a result of illegal conducts by the Respondent. As a matter of law, the claim for general damages, as opposed to special damages, requires one not to strictly plead. 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.

We have considered the testimony of CW1, CW2 and exhibits tendered and none of them would legally justify the Authority to exercise its discretionary power of awarding general damages to the Complainant. It is our opinion that this case was fit for prayers of special damages rather than the general damages. CW2 evidence was that the Complainant's sales at Bomang'ombe area have dropped drastically. This would have justified the grant of special damages if CW2 proceeded to tender documentary proof thereof. None of the witnesses has indicated that the Complainant's reputation has been lowered in the eyes of its customers as a result of illegal refilling. Furthermore, there is no contract between the parties for the same to be breached and hence to attract general damages. For this, therefore, the prayer for general damages is dismissed. The Complainant is awarded the costs of the complaint.

**GIVEN UNDER SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 27<sup>th</sup> day of July 2018.



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