

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

**COMPLAINT NUMBER EWURA/33/1/433**

**RYAMBONGO MANYAMA MSIBA AS A NEXT FRIEND OF  
MSIBA RYAMBONGO (MINOR) ..... COMPLAINANT**

**VERSUS**

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

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**AWARD**

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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 22<sup>nd</sup> March, 2018, the Energy and Water Utilities Regulatory Authority ("the Authority") received a complaint from Mr. Ryambongo Manyama Msiba as a next friend of Msiba Ryambongo who is a minor, resident of Shuleni Street, Chumwi Majita Village in Musoma Rural District, Mara Region. ("the Complainant") against Tanzania Electric Supply Company Limited ("the Respondent").

The Complainant claims for both special and general damages for the injuries sustained as a result of an electrocution he suffered on the electricity supply line of the Respondent. The Complainant further alleges that as a result of the

Respondent's negligence, he sustained injuries and suffered severe electric shock which led to amputation of his both arms and the left leg.

The Complainant states that, on 13<sup>th</sup> August, 2017, at Chumwi Village in Musoma Rural District, one Msiba Ryambongo, aged fifteen years by then ("the minor") touched a stay wire which was linked to the 33kV Distribution line owned and operated by the Respondent. The Complainant further claims that at the time of the incident, the stay wire was without a stay rod purportedly removed due to acts of vandalism. The Complainant further claims that upon touching the wire, the minor suffered severe electric shock and was rushed to a nearby Health Centre called Murangi where he was given first aid and referred to Musoma Regional Hospital for further treatment. The Complainant claims that at Musoma Regional Hospital the Complainant's arms and left leg were amputated due to the injuries suffered.

The Complainant claims from the Respondent payment of special damages amounting to TZS 9,000,000.00 to cater for medical, food, transport, and other care expenses and TZS 500 million as general damages for the pain and psychological torture suffered as a result of the electric shock from the infrastructure owned by the Respondent.

After receiving the complaint, the Authority wrote to the Respondent instructing them to present their reply to the complaint in terms of Rule 5(1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, 2013.

In their defence the Respondent states that they received information about the incident on the 20<sup>th</sup> August, 2017 from one John and on 4<sup>th</sup> September, 2017 they received the letter from the Complainant's next friend. The Respondent further states that they believe that the Complainant was injured in the course of vandalizing their infrastructure and therefore they are not liable to compensate him in any way.

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 complaint was heard on 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> of May, 2018 consecutively at Musoma Municipality where both parties appeared. The Complainant was represented by Mashaka Fadhili, learned advocate while the Respondent was represented by Ms Juliana W. Kipeja, Legal Officer. The following issues were framed for determination:

- 2.1 whether the Respondent has a duty of care towards the Complainant;
- 2.2 if the first issue is answered in the affirmative, whether the Complainant was injured as a result of the Respondent's breach of his duty of care; and
- 2.3 what reliefs or remedies are the parties entitled to?

At the hearing the Complainant's side called five witnesses and tendered various pieces of evidence whereas the Respondent's side brought four witnesses and both tendered documentary evidence but only the Respondent filed final closing submissions.

## **3.0 The Decision**

In arriving at the decision, the Authority has considered the applicable laws which include the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 ("the Act"), the EWURA (Complaints Handling Procedure) Rules, Government Notice Number 10 of 2011, The Electricity (Supply Services) Rules, GN No. 4/2017, the



Electricity (General) Regulations GN No. 63/2011. The Authority has 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 decisions on the issues raised is as follows:

### **3.1 Whether the Respondent has a duty of care towards the Complainant**

It is not in dispute that the injuries sustained by the minor were a result of a severe electric shock after coming into contact with a compromised stay cable on the Respondent's Distribution lines. The Respondent's defence is to the effect that the Complainant was injured in the course of vandalizing the Respondent's infrastructure. It is therefore the Respondent's argument that they are under no duty of care to trespassers on their infrastructure or anyone coming to the said infrastructure for the purpose of vandalizing it. The question before us is to determine whether the Respondent had a duty of care towards the Complainant and whether such duty was breached?

The Complainant who is the father of the minor stood as the first witness (CW1) and testified that the minor was injured and subsequently lost his hands and a limb as a result of the Respondent's negligence. CW1 testified that the Respondent has a duty to ensure that their infrastructure is safe and does not pose any danger to the public. CW1 added further that the Respondent has an obligation to correct any anomaly in the infrastructure in order to avert any danger to the public especially to the children who are less likely to take precautions compared to adults. On their side three of the Respondent's witnesses testified that the stay cable which was a subject matter of this complaint was meant to temporarily support the pole during the construction of the line and that the said cable was safely rooted in the ground. They are of the view that the minor must have done something to make the cable to make it come into contact with the live high tension line at the top. They therefore insist

that the Respondent complied with safety regulations and therefore are not to blame for the minor's injuries.

We first considered the legal provisions which may fit into the facts of this complaint and we looked at section 14(4) of the Electricity Act Cap.131 which states:

14(4) *"A licensee shall at all time during the term of licence comply with the provisions of:-*

- (a) .....n/a*
- (b) .....n/a*
- (c) all other relevant laws"*

The first cited provision implies that the licensee (i.e. the Respondent) has an obligation to comply with other laws in addition to the Electricity Act.

In purview of section 14(4) above, we have further considered Regulations 20 and 21 of the Electricity (General) Regulations GN. 63/2011 which reads and we quote:

*20(1) The licensee shall in conducting its licensed activities of generation, transmission, supply and installation, ensure compliance with industry's standards and best practice to guarantee protection of the public from danger"*

*(2) the danger referred to under this regulation includes dangers to persons, property and the environment"*

*(3) .....n/a;*

*(4).....n/a"*

*21. "Notwithstanding the provisions of regulation 20, in conducting its licensed activities the licensee shall comply with relevant and applicable laws in place with regard to health and safety of persons, property and the environment"*

We are therefore of the view that section 14(4) and Regulation 21 impose an obligation on the licensee (i.e. the Respondent) to comply with laws relating to health and safety of persons, property and the environment whereas Regulation 20 is a typical example of such provisions of the laws relating to health and safety of persons, property and the environment which the licensee should comply with. We are therefore satisfied that the Respondent has a general obligation to comply with laws relating to health and safety of persons, property and the environment. Also the Respondent has a duty under Regulation 20 to guarantee protection of the public from danger and therefore they had a duty towards the Complainant to protect him from the danger posed by their activities.

### **3.2 Whether the Complainant was injured as a result of the Respondent's negligence**

The Complainant claims that the Respondent was negligent by failing to take precautions to ensure that their infrastructure does not pose a danger to the public. On the other hand the Respondent's argument was that the minor was injured due to his own unlawful acts of tampering or vandalizing the Respondent's infrastructure. It is not in dispute that the Complainant was severely electrocuted and hospitalized at Musoma Regional hospital. While at the hospital, the minor's condition got worse and necessitated the amputation of both hands and one leg. It is the Complainant's argument that the injuries sustained and the subsequent loss of his hands and a limb were a result of the Respondent's negligence.



All the five Complainant's witnesses said that the Complainant was injured after touching a stay cable which was hanging. Four of these witnesses arrived at the scene and saw the cable in question. The fact that the stay wire was hanging over the ground was corroborated by the Respondent's witnesses RW1 and RW2 who testified that at the scene some parts of the stay wire namely "*stay turn buckle and stay gay grip*" were missing and the remaining part was hanging. On cross examination RW3 though did not visit the scene also admitted that if parts of the stay cable are removed there is a great possibility that the remaining upper part would be hanging. Further, four of the Complainant's witnesses (CW1, CW2, CW4 and CW5) testified to the effect that there was no warning to the public that the infrastructure poses a danger or anything to warn the general public about the alleged construction. In its final written submissions, the Respondent's counsel argues that the stay cable was lying on the ground; but the said submission is not supported by any evidence tendered. As pointed out above four of the Complainant's witnesses including three of the Respondent's witnesses confirmed that the stay wire was hanging over the ground. RW1 testified and tendered exhibit R1 which is the Emergence Report for 20<sup>th</sup> August, 2017 in which one John reports that.... "*Stay ya HT imekatwa*". It is therefore out of context that a cable once affixed to the ground which has been cut would still be lying on the ground. We concur with the testimony of the CW1, CW2, CW4 and CW5) and that of RW1, RW2 and RW3 that the stay wire in question was reduced in its height and therefore was hanging over the ground and not lying on the ground when the minor came into contact with it.

The other key issue we have to address is the condition of the stay wire in question. Both the first and second Respondent's witnesses stated that there are two types of stay wires or cables. The first is the one intended for temporary support of an electric pole during construction, and the second is the one intended to support a pole at a corner after construction. The former is usually

removed after construction whereas the latter is a permanent installation. RW1 and RW2 testified during hearing that the stay wire in question was a temporary support to the pole during the construction of the line and that it was not immediately removed after construction instead it was removed after the incident. When asked why he removed the stay wire instead of just repairing it RW2 said it had no effect whatsoever since it ought to have been removed immediately after construction. We are of the view that, if the cable in question was intended to temporarily support the pole during construction then failure to remove it after construction amounts to negligence. We have further considered the fact that since the said cable was not intended to be a permanent structure there is a great possibility that it did not meet the standard and requirements of a permanent stay cable which includes having an insulator. Although the Respondent's witness said the stay cables should always be safe, that may not be the case especially when the cable in question was merely intended to support the pole during construction and not as a permanent structure after the line has been energized. There is therefore a great likelihood which we are made to believe that the cable in question did not contain the safety features of a permanent stay cable.

Turning on the efforts taken by the Respondent in creating awareness to the public on safety issues, RW4 who is the Respondent's Regional Customer Relations Officer testified that they held awareness meeting on 14<sup>th</sup> February, 2015 at the Complainant's village. RW4 said that the awareness meeting touched on the project itself, electricity generation and flow, wiring, cost of the project and cost sharing, customer's responsibility against that of the utility, proper electricity use, security, cost of purchasing electricity after connection and provision of important and emergence numbers. RW4 tendered the attendance register dated 14<sup>th</sup> February 2015 which was admitted as exhibit R-3. We have closely scrutinized exhibit R-3 in light of Regulation 20(3)



GN.63/2011 which reads that the licensee shall ensure that the public is aware of the licensee's activities and any associated potential danger and hazards".

The title of the awareness meeting was "PROGRAMU YA ELIMU KWA WATEJA WATARAJIWA WA TANESCO MIRADI INAYOTEKELEZWA NA (REA) JANUARI, 2014-JUNE, 2015". It is our considered opinion that the awareness meeting conducted by the Respondent was not the kind of awareness contemplated under Regulation 20(3) of GN No. 63/2011. The awareness in question was intended for "*potential customers*" only and not the general public as a whole. No wonder it was attended by only eight people at the village in question and the Complainant's next friend was not among them. It is our considered view that the said meeting was intended to introduce the project and provide guidance on what should be done to be connected to the electricity supply services although it did touch on the licensee's activities. It is our further view that the said awareness seminar did not capture safety issues. One would expect that a public awareness meeting should have a wider outreach and would not single out a certain group or class of people. This awareness meeting therefore did not meet the standard and requirements of Regulation 20 (3) which calls for "*public awareness*" and not only for potential customers and should be based on both the licensee's activities and associated dangers and hazards.

The allegations of vandalism by the Complainant as raised by the Respondent's counsel attracted our attention for discussion. The Respondent's counsel submitted that the minor was injured in the course of vandalizing the infrastructure and therefore the Respondent is not liable to compensate him. The Respondent's learned counsel further added that the Complainant took more than ten days to report the matter to the police and more than eighteen days to report to the Respondent. What the learned counsel was trying to say is that the Complainant was trespassing and took the risk of interfering with

electrical infrastructure which is a dangerous thing to do. She further insinuates that the failure to report the accident immediately was an attempt to conceal something illegal. No further evidence was adduced to corroborate this idea of the Respondent's side.

The Complainant was a fifteen years old boy when this tragic event happened. As per CW3 and CW4 the minor was a standard five pupil at Chumwi "B" Primary School. On the day of the incident the Complainant and his 14 year's old little brother (CW4) were grazing their family cattle on a weekend; and on their way home the Complainant passed close to the pole and the hanging stay wire leading to his electrocution. This story was never controverted by the Respondent. We have further considered the location itself and found it to be within the village and close to the Complainant's home. Both parties acknowledge that the pole in question is a second pole from Chumwi Centre and is a few meters from a foot path which leads to farmland as stated also in exhibit R-1 the emergency report. In our view, this is not a place where one would think about vandalizing an infrastructure especially before dawn when people are passing around. During hearing the Division of the Authority could not visit the scene due to the fact that the status quo thereon has changed; however, the Division was able to visit an electricity pole right outside the hearing venue. The purpose of the visit was to test the understanding of the witnesses about stay wires in relation to the situation at the scene. It was observed among other things that a stay cable that is affixed to support the pole is a strong and firmly fixed structure which takes the full energy of several adult persons with tools to install. We have come to the conclusion that besides lack of motive on the minor; the minor being an adolescent young boy with or without tools is a no match at all to the amount of energy needed to uninstall such a structure. The Respondent's argument that the Complainant was in the course of vandalizing the infrastructure is therefore misconceived and lacks merit at all. We dismiss this argument without further recourse to the rest of it.



Based on the foregoing we hereby find and hold that the Respondent was negligent for failing to exercise proper care to ensure that their infrastructure did not pose a danger or hazard to persons. The Respondent had a duty to protect the public and they breached that duty as a result of which the Complainant suffered serious injuries leading to the loss of his limbs.

### **3.3 What reliefs or remedies are the parties entitled to?**

The Complainant prays for special damages in form of medical expenses amounting to TZS 9,000,000.00 as well as general damages at the tune of TZS 500 million. CW5 tendered exhibit C2 and C3 a discharge summary and police form number 3 respectively to support his prayers. The Respondent on the other side prayed for the dismissal of the complaint with costs for lack of merit. During hearing the Complainant claimed to have incurred costs for medical services but did not tender any documentary evidence such as payment receipts to support his claims. As it is known to be a cherished principle that special damages must be strictly pleaded and proved, we refrain from awarding the Complainant any special damages as the same have not been proved.

The back of C3 was filled by an Assistant Medical Officer and stamped with the stamp of the Regional Medical officer and comments *which reads* "patient had extensive burn wounds-upper limbs amputated and left leg due to gangrene, so developed disability". Further to that the degree of injury sustained was classified as "grievous harm". Neither C2 nor C3 stated precisely the extent of the disability suffered by the Complainant and therefore it was left to the Authority to exercise its judgment as to extent of the Complainant's disability. Given the facts which are quite straight that the Complainant lost both hands and the left leg it is obvious that this is a permanent disability. The condition is such that the Complainant will permanently be dependent on someone else to



take care of him to feed him, to shower, to use toilets, to move, to wear just to mention a few. The Complainant will also be unable to get education unless there are means to make him able to write using his right leg. Above all he will not be able to enjoy life the same way other persons with their limbs do.. In short the Complainant is permanently disabled.

It was also noted with concern that since the happening of this incident on 13<sup>th</sup> August, 2017, no officer of the Respondent has visited the Complainant/minor either in hospital or at home until late September, 2017 when an officer from the headquarters travelled to Musoma to see the victim and assess the situation. The visit by the officer from Dar es Salaam was prompted by the letter by CW1 to the Managing Director of the Respondent Company complaining about mistreatment by the Respondent's Musoma Office. This lack of concern on the Respondent's side was manifested at the hearing by the bad attitude and outright arrogance shown by the Respondent's officers who testified. Their conduct added salt to the Complainant's wounds and we find to be highly inconsistent with best practices in customer care and public relations.

In arriving at this decision the Authority has considered the law, the evidence, the age and future prospects of the Complainant as well as the expert advice provided by the Muhimbili Orthopedic Institute in their letter dated 2<sup>nd</sup> of October, 2018 in which they advised that the Complainant is permanently disabled and that he will require prosthetic instruments to support him for the rest of his life. The said instruments according to the advice cost 13 million and are replaceable every after 5 years throughout the life of the person. Since according to the National Bureau of Statistics National Censuses of 2012 life expectancy is 61 years and given the current age of the Complainant is 16 years that means his prosthetic devices will require replacement about 9 times during his life time.

Apart from medical consideration above, the Authority has also considered the age of the Complainant and the fact that as a young man in school his future dreams of becoming whoever he dreamed to be have been cut short including his future earnings, a career, and enjoyment of life. On the contrary he has until now endured injuries, pain, loss of limbs and psychological torture and permanent disability.

Based on the foregoing we hereby find the Respondent liable in negligence and order the Respondent to pay the Complainant the sum of TZS 217,000,000.00 as general damages. The Complainant is also awarded costs of the complaint.

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



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