

THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

(EWURA)

COMPLAINT NUMBER EWURA/33/1/185

BETWEEN

MR. RICHARD KOMBOLE COMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITED..... RESPONDENT

AWARD

(Made by the Board of Directors of EWURA at its 147th Extra-Ordinary Meeting held at Dar es Salaam on the 31st day of August 2015)

1.0 Background Information

On 13th November 2013, the Energy and Water Utilities Regulatory Authority ("the Authority") received a complaint from Mr. Richard Kombole ("the Complainant") complaining on wrongfully power disconnection which was done by TANESCO ("the Respondent") at Ukonga Majumba Sita, in Dar es Salaam ("the Premises") for allegedly stealing electric power by punching the lead in wire. The Complainant claims for the payment of TZS 50,000.00 per day from

13th September 2012 to the date when the power was restored that is 22nd April 2013 which is equivalent to TZS 10,500,000. The Complainant also claims for the declaration that the claim of TZS 3,144,571.47 owed by the Respondent is illegal and cost of this suit. Consequently the Complainant also claims for declaration that the disconnection of power done by Respondent is illegal and any other remedy that the Authority may deem fit to grant.

The Complainant alleges that he is a customer of the Respondent with meter number 01342543632 installed at his premise situated at Ukonga Majumba Sita, Dar es Salaam. On 13th September 2012 Respondent's officials visited the Complainant's premises where they claimed that the Complainant was bypassing the meter by punching the lead-in-wire. The Complainant allege that the allegations are untrue as for by pass to be effective there must be a punched wire after the meter. According to him, the alleged faults were designed to fix the Complainant as he has already complained on the malpractice by the Respondent officials.

The Complainant further alleged that the disputed premise is a source of income by renting it to tenants. The act of Respondent to disconnect power has made him suffer financially as he lost a tenant. The Complainant concluded by alleging that the claim of TZS 3,144,571.47 by the Respondent against the Complainant as revenue loss is illegal and unlawful.

Upon receipt of 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, GN No. 10/2013.

The Respondent on its part denies the allegation that they illegally disconnected power from the Complainant premises. They argued that the Respondent rightly followed all the laid down procedures for disconnecting power from the Complainant after discovering that the Complainant was stealing power through meter bypass by punching the lead-in-wire. Therefore the Respondent's act of disconnecting power from the Complainant was lawful as all the procedures required to be done were followed. Furthermore the Respondent alleged that they are neither responsible for any damage and loss nor liable for compensating the Complainant because the investigation conducted by its official revealed that the Complainant was stealing power. The Respondent justified its claim for payment from the Complainant of TZS 3,144,571.47 being energy charges, plus interest thereon.

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

On 12th February 2014, when the matter came for the first hearing both parties appeared. The Complainant was represented by learned counsel Mr. Jamhuri Johnson, whilst the Respondent was represented by Mr. Benedict Kivumo, learned advocate.

During hearing the following issues were framed for determination:

1. whether the Respondent's act of disconnecting power from the Complainant's premises was justifiable;

2. whether damage was suffered by either party; and
3. what remedies to the parties, if any?

The hearing of the matter took three different days which are 12th February 2014, 6th January 2015 and 23rd May 2015. During the hearing retired Captain Rona Kondo Dilunga stood as the first witness (CW1) and the Complainant, Mr. Richard Kombole stood as the second witness (CW2). Both witnesses tendered various documents as exhibits. The Respondent failed to produce any witness when they were ordered to do so and therefore the case was closed without hearing their side. At the conclusion of the hearing both parties were ordered to submit their written closing submissions within two weeks after the date of hearing. Both parties obliged and we are very thankful for their submissions.

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 Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, GN No. 10/2013. We have also considered oral testimonies of Complainant witnesses together with the exhibits submitted by the Complainant, closing final submission of both parties and good electricity industry practices.

As we have said earlier that the Respondent failed to bring witnesses despite several adjournments made by the Division of the Authority to avail them an opportunity to be heard. The counsel of the Respondent kept on giving empty promises that he will procure the

attendance of the said witness without fulfilling his promises until when the Division decided to close the case and ordered them to submit their closing submissions. We are also puzzled by the Respondent's counsel move of making reference, in his final submissions, to the repealed Electricity Ordinance Cap.131. We advise the counsel to always make a thorough research on the laws governing the subject matter in dispute so that he can assist the relevant organ in making a just and fair decision.

Our decisions on the issues raised during hearing of the matter are as follows:

Issue No. 1: whether the Respondent's act of disconnecting power from the Complainant's premises was justifiable

Looking at the facts of the complaint, we may sum up by saying that, it is not in dispute that the Complainant is a customer of the Respondent with a meter number 01342543632 installed at his premises located at Ukonga Majumba Sita in Dar es Salaam. It is also not in dispute that on 13th September 2012 the Respondent's official conducted an inspection at the Complainant's premises the results of which prompted the Respondent to disconnect power from the Complainant's premises.

Aforesaid notwithstanding, the central question before us is on whether such disconnection was lawful or not. In order to answer that question we have to establish between the Respondent and the Complaint who has the responsibility to prove whether power disconnection was justifiable or not? To answer that puzzle we were guided by the cardinal principle of law which state that he who

alleges must prove. In this case it is the Complainant who is claiming that the disconnection of power to his premises was unjustified and therefore it is the Complainant who has the responsibility to prove.

In determining this issue, we have evaluated the testimonies of CW1, CW2 and further examined exhibits "C1" "C3" and "C8" tendered by the Complainant. CW1 testified that he is the one who manages the premise which is the subject of this dispute. CW1 testified to the effect that the disputed premise belongs to his brother who is also the Complainant in this suit. CW1 stated that on 13th September 2012 was informed by his tenant that the Respondent's officials disconnected power from the disputed premises. CW1 stated that after being informed of the incident he followed up the matter with the Respondent's offices at TAZARA area and he was told that the power has been disconnected following the inspection that was conducted at his premises on 13th September 2012 which found that he was stealing power by by-passing the meter. The Respondent issued to CW1 with Meter Audit Report which he tendered as exhibit "C1".

CW1 alleges that he previously had some problems with the Respondent after they had placed an electricity pole at the middle of his gate and he complained to them. Some of the Respondent's officers were not happy about this and thus he feels that the power disconnection was done maliciously to punish him. CW1 complained that the Respondent is even not sure how much they owe the Complainant as the amount claimed kept on changing from TZS 2,000,000 to TZS 10,171,193 and finally TZS 3,144,071.47. To prove that assertion, CW1 tendered various exhibits including "C3" and "C8".

On his part CW2 testified to the effect that he is the owner of the premises but at the material time when this dispute arose he was not around so he left the management of the disputed premises to his brother who is CW1.

We have examined all the testimonies and evidences tendered, together with the closing submissions made by both counsels. It is our preliminary thought that looking at some of the exhibits tendered by the Complainant they rather implicate him instead of helping him. Exhibit "C8" which contains the picture of the disputed premises together with the lead-in-wire shows clearly the said wires to have been punctured and some evidence of external meter bypass. Puncturing of the lead-in-wires in the absence of anything to the contrary creates a *prima facie* evidence of a foul play by whoever is occupying or owning the disputed premises.

Exhibit "C8" is further corroborated with exhibit "C3" which is the letter of the Complainant addressed to the Respondent. Reading between the lines of the said letter it suggests, in no uncertain terms, that the Complaint seems to have prior knowledge of "the evil" being committed at his premises; however, he did not know exactly when "the evil" was done. Looking at the facts of this matter, one inference can be drawn, and that is, the Complainant might have not been aware or participated in the alleged power theft but his tenant could have done so.

We have also examined the consumption trend of the Complainant for the period of fifteen months from July 2011 to September 2012. The consumption pattern is very intermittent and for a domestic house it is rarely to expect such massive changes in energy pattern.

For example we observed a drastic reduction in energy consumption from 301 kWv to 110 kWv which is below the average consumption while the same numbers of tenants were living in the disputed premises. It is our considered opinion that the sudden change in the power consumption from high to low was due to meter bypass.

Let us express our concern on the unacceptable behavior by the Complainant to come to the Authority in a bid to bless one of the heinous crimes we have been fighting all the time, i.e. power theft. It is our belief that, the Respondent shall take the appropriate measures in this matter, apart from recovering the loss revenues from the Complainant but also considering instituting or cause to be instituted criminal case against the Complainant.

Based on the foregoing and in the final analysis we are satisfied that the Complainant has failed to discharge the burden, on balance of probabilities, to the effect that, power disconnection from the disputed premises was unjustified.

Issue No. 2: Whether damage was suffered by either party?

The Complainant claims for the payment of TZS 50,000.00 per day from 13th September 2012 to the date when power was restored that is 22nd April 2013 which is equivalent to TZS 10,500,000. The Complainant also claims for the declaration that the claim of TZS 3,144,571.47 owed by the Respondent is illegal and cost of this suit. Consequently the Complainant also claims for declaration that the disconnection of power done by the Respondent is illegal and any other remedy that the Authority may deem fit to grant.

Since we have found that the Respondent was justified in disconnecting power from the Complainant when deciding the first issue, and we concluded that due to the available evidence there was in fact energy theft, it follows therefore that the Complainant's claims must fail. The Complainant cannot be entitled under the law to claim to have suffered any damage for the act that has arisen from his own wrong doing. It is our further opinion that the Respondent, in the reverse, is entitled to be compensated TZS 3,144,071.47, being the revenue loss as a result of power theft by the Complainant.

Issue No. 3: What remedies to the parties, if any?

Based on the foregoing, the complaint is hereby dismissed with costs and in lieu thereof the Respondent is therefore entitled to be compensated by the Complainant for the energy loss at the tune of TZS 3,144,071.47.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (**EWURA**) in Dar es Salaam this 31st day of August 2015.



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Felix Ngamlagosi
DIRECTOR GENERAL