

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

COMPLAINT NUMBER: EWURA NP. 71/135/03

BETWEEN

M/S STAFF HOUSE VTC REPRESENTED BY

RAPHAEL JOSEPH NYANDA.....COMPLAINANT

VERSUS

REGIONAL MANAGER TANESCO

MUSOMA.....RESPONDENT

RULING

*(Made by the Board of Directors of EWURA at its 123rd Ordinary Meeting held at
Dar es Salaam on the 31st day of October 2017)*

This is the ruling on the preliminary objections raised by both parties against each other before the matter was fixed for hearing on merit. Briefly the facts of the matter are that Ms Staff House VTC of Musoma (herein after referred as the "Complainant") represented by Mr Raphael Joesph Nyanda filed a dispute against the Regional Manager TANESCO Musoma (hereinafter referred as the "Respondent") disputing electricity bills at its rented premises located at Makoko area, Nyamongo VTC at Musoma Minicipality.

Mr. Nyanda alleged that sometime in March 2015, he entered into a lease agreement with M/S Staff House VTC of Musoma and he continued to pay for electricity bills without any problem until the end of 2015. Between December 2015 and February 2016, he informed the Authority that he started to encounter problems when purchasing electricity for his LUKU meter. He made follow up at the Respondent's Offices to enquire the matter and was informed that his electricity account is indebted with arrears from previous years' consumption. He stated that he was issued with two electricity bills; one belonging to MS Staff House VTC with a debt of TZS 37,467.78 and another one bearing the name of Yohan Akoth with a debt of TZS 273,220.88. After discussions with the Respondent he was able to pay and use his LUKU meter. He then purchased electricity by paying TZS 30,000 but was able to get units worth TZS 15,000 and the remaining TZS 15,000 was said to be debt repayment. To his surprise the debt also rose to TZS 428,898.92. Mr. Nyanda, as a representative of the Complainant, decided to lodge a complaint to the Authority after the Respondent failed to recognize him as his customer.

In its reply to the Complaint, the Respondent raised a preliminary objection (PO) against the complaint on four points of law:

- (a) that Mr. Raphael Joseph Nyanga has no locus stand to represent the Complainant Ms Staff House VTC;
- (b) that claims contained in this complaint are of Raphael Joseph Nyanda and not Complainant's claims and since Mr. Nyanda has no locus those claims are as good as if not presented before the Authority;
- (c) that the Complaint is time barred; and
- (d) that the Respondent is improperly brought as a respondent in this case that is misjoinder of parties.

Before the matter came for hearing, the Complainant also submitted a preliminary objection (PO) on point of law that the Respondent violated rule 6(6) of the EWURA (Consumer Complaint Settlement Procedure) Rules GN. NO. 10 of 2013 as he failed

to file its defense within twenty-one (21) days therefore this matter should proceed ex- parte.

When the matter came for hearing on 21st August 2017 at Musoma, the Division ruled that the said PO will be disposed of by way of oral submissions and both parties complied. We shall begin by determining the Complainant's PO before we turn to the Respondent's PO.

The Complainant through his representative, Mr. Nyanda argued that his PO finds its legs to stand on the summons wrote by the Authority to the Respondent. According to him, the said summons referred rule 5(1) and rule 6(6) of EWURA (Consumer Complaints Settlement Procedure) Rules, G. N No 10 of 2013 (hereinafter referred as the Rules). The summons gave the respondent 21 days to file its defence and within the same period to serve the Complainant with a copy of its defence. Failure of the Respondent to serve the Complainant with a copy of its defense violated the law and denied the Respondent its right to appear before the Authority to defend itself in this matter hence matter should proceed ex-parte.

The Respondent through her advocate Ms Juliana Kipeja submitted that the Rules do not strictly provide for a Respondent to serve a copy of its defence to the Complainant. She stated that what the Rules provide is that the Respondent should file her defence to the Authority. She further stated that, even if the Respondent was to serve the Complainant, it is not required by the Rules and the same Rules also do not oblige the Respondent to give notice to the Complainant that she has served her defence to the Authority. In view of that it is her considered opinion that it is the Authority which is responsible to serve the Complainant with a copy of the Respondent's defence.

She went on to state that she received a summon to file its defence on 25th April 2017 and she submitted its defence to the Authority on 25th April 2017 which is well within

21 days required by the Rules. In view of that, she argued that the Complainant's PO is baseless and legally unfounded and the same ought to be dismissed.

We have considered the submissions made by both parties with regard to the Complainant's PO and we wish to make the following evaluations and finding. The main issue surrounding this PO which the Authority is called to determine is the interpretation of rule 6(1) of the Rule. The said Rule provides and I quote:

"The respondent shall, not later than twenty-one days after receipt of the summons in rule 5, present to the Authority a defence to the complaint which may include a counterclaim or claim for set-off."

The Complainant is of the Opinion that the Respondent was obliged by the law, while filing its defense to the Authority on the same time avail a copy of its defence to the Complainant. On Contrary view, the Respondent argued that the law does not impose any obligation to her to serve the Complainant because the law did not expressly cast that obligation. What the law provides is for the Respondent to file its defense within 21 days to the Authority.

We have evaluated the arguments of both parties and we are in agreement that the provision of rule 6(1) of the Rules does not provide an obligation to the Respondent to serve the Complainant with its defense within 21 days. What the law provides is for the Respondent to file its defense to the Authority within 21 days and normally this is the procedure even in ordinary court of law. Order VIII r.2 of the Civil Procedure Code Cap.33 states that a defendant in a civil suit shall submit its written statement of defence to the court as prescribed in the summons and I quote:

"Where a summons to file a defence has been issued and the defendant wishes to defend the suit, he shall, within twenty-one days of the date of service of the summons upon him or such longer period as the court may direct in the summons, present to the court a written statement of his defence"

Servicing of summons or reply to the summons may be done by the Authority or the Respondent. Even in court there are court process servers who are used to serve summons and written statement of defence to parties involved in the dispute.

In this matter the Respondent filed its defence to the Authority on 25th April 2017 which is 20 days from the date she was served with a summons. After receipt of the defence, the Authority communicated with the Complainant and ensured that the Complainant received the Respondent's defence as soon as practicable before the date set for mediation.

Based on our analysis we find that the Complainant cannot invoke the provision of rule 6(6) of the Rules because the Respondent filed its defence to the Authority within the prescribed time and in accordance with rule 6(1) and to our opinion she was not under any legal duty to serve the Complainant with its defence within 21 days as the summons cannot override the set Rules.

Now let's turn to the Respondent's PO as put forth by the Learned Counsel of the Respondent Ms Juliana Kipeja. We have merged the first and second respondent's preliminary objections because they are more or less similar. With regard to these two objections, the Respondent's learned counsel submitted that Mr. Raphael Joseph Nyanda has no locus stand to represent the Complainant Ms Staff House VTC. She argued that Ms Staff House VTC is a company and Mr Nyanda is merely a tenant not a Principal Officer of the company therefore he has no mandate to stand and represent the Complainant. If Mr Nyanda was to appear and represent the Complainant, he was supposed to obtain a letter or a power of attorney duly authorizing him to appear and represent the Complainant. The Respondent's learned counsel also stated that the claims submitted to the Authority are those of Mr. Nyanda and not the Complainant. Considering that the Respondent has a service contract with the Complainant and not Mr. Nyanda, the privity to contract provides that it is only parties to the contract who can sue and claim rights or damages with respect to the contract.

In responding to the first PO, the Complainant argued that there is no legal requirement requiring a tenant to obtain a power of attorney in order to sue for matters that directly affect the tenant or a tenant has interest in. The Complainant supported his argument by citing rule 4(1) of the Rules stating that the said rule provide that any person may file a complaint in relation to regulated services. The Rules do not put restrictions. He believes that the Rules have considered the fact that most of Tanzanian about 90% reside in rented premises hence giving a wide avenue for a tenant to file a complaint in case they are aggrieved by a supplier of a regulated service.

We have evaluated the arguments of the Complainant's representative Mr. Nyanda and that of the Counsel of the Respondent and we are persuaded by the Respondent's arguments that the Complainant's representative has no *locus standi* to address and prosecute this matter on behalf of the Complainant Ms Staff House VTC.

It should be understood that EWURA Act, Cap. 414, Electricity Act, Cap.131 and GN. No.10 of 2013 provide that the consumer of regulated services or his representative can lodge a complainant against a supplier of regulated services. Section 3 of the Electricity Act defines Customer to mean a person who purchase or receives electricity for own use or sale. In this matter we have to ask ourself between Ms Staff House VTC of Musoma who is the owner of the premises and the LUKU meter on one hand and Mr Raphael Nyanda who is the tenant of Ms Staff House VTC of Musoma, who is the customer? It is no doubt that Mr. Nyanda is a customer because he purchases electricity from TANESCO for his own use. Mr Nyanda do so by using a LUKU meter which is in the name of Ms Staff House VTC of Musoma the landlord and Complainant in this case. We are quite in agreement with Respondent's Counsel that their customer is Ms Saff House VTC of Musoma who appears in this Complainant as a complainant and if Mr Nyanda claims to represent the Complainant, he should have at least brought with him some proof showing that indeed he had obtained authorization from the Complainant to appear on their behalf. It is trite law that for someone to legally sue on behalf of the other, there should be some specific legal

instruments that gives the said powers to him. Such instrument can be in a form of a power of attorney, be it general or specific. The importance of ensuring that someone has specific and legal instructions to sue on behalf of the other lays on the fact that, the conduct of cases/complaints carries with it some legal consequences including payment of costs in case of any eventuality. Despite the fact that the procedure of settling complaints as established under the provisions of the EWURA Act and GN No. 10/2013 is *quasi-judicial* and thus not bound by strict rules of procedure and evidence, it is our considered opinion that with regard to issues of locus to sue on behalf of others, the standard we use is the same as that used with other ordinary courts of law.

We are aware that Mr. Nyanda has interest in this subject matter because he is the one who was directly affected by the disputed bill because he was residing in the Complainant's premises and he was actually the one who was paying the bills. Mr Nyanda had several options to pursue his rights such as to seek and obtain power of attorney from the Complainant as advised by the Authority or sue the Complainant and join TANESCO as the second respondent or submit a lease agreement when filling complainant to show his connection with the Complainant. It is our considered opinion that it is quite not right for Mr Nyanda to allege that he is suing on behalf of the Complainant without providing a proof that the Complainant has authorized him to file the case on their behalf.

We have interpreted Rule 4(1) and Rule (2) of the EWURA (Consumer Complainant Settlement Procedure) Rules, G.N. No 10 of 2013 which the Complainant referred to when responding to Respondent's arguments and Rule 16(2) of the Rules. According to rule 16(2) of the EWURA (Consumer Complainant Settlement Procedure) Rules, G.N. No 10 of 2013, the Complainant could appear in person, by an advocate or an authorized representative. While rule 4(1) states that any person may file a complaint against a regulated supplier in respect of any matter connected with the regulated services, rule 4(2) stresses that, notwithstanding the generality of rule 4(1), the Council or authorized representative may lodge a complaint on behalf of

the customer. The Rule defines the authorized representative to mean a person duly authorized by the Complainant or the Respondent to represent him in the conduct of the complaint and the term shall include the Council. If the Complainant opted to be represented in this matter, the same should have been done through proper legal procedure by filing a power of attorney to the Authority. In absence of that the representation of the Complainant by Mr. Raphael Joseph Nyanda falls short of the definition of duly authorized representative as required by the law.

In the third point of objection the Respondent tried to persuade the Authority that the matter is time barred by making reference to rule 24 read together with the Seventh Schedule of the said Rules which provides that bill related disputes ought to have been brought before the Authority within 12 months from the date the dispute arose. From the pleadings, Mr. Nyanda experienced problems with his meter between December 2015 and February 2016. He wrote a letter to TANESCO complaining about the matter in January 2017. On 2/2/2017 TANESCO replied to Mr. Nyanda's letter. After being dissatisfied with the Respondent's letter, Mr Nyanda decided to lodge a complainant on March 2017. From the date Mr. Nyanda discovered the dispute it took him eleven months to seek remedies by writing a letter to the Respondent. It is a well settled law that the time in which the complainant was seeking remedies from the regulated supplier is excluded when computing the time for the basis of establishing time limitation. As such, it is our opinion that the complaint was lodged within the allowed timeframe and thus not time barred.


In her last PO, the Counsel for the Respondent argued that the Authority was improperly moved because the Complainant has wrongly sued a wrong person. She stated that in the Complaint form, the Complainant is suing TANESCO Regional Manager- Mara region. She reminded the Complainant that TANESCO is a legal person capable of suing and being sued on its name. The Complainant was supposed to sue the Company and not the Officer of the Company as he did. In support of her argument she cited the case of Solomon Vs Solomon (1897) AC 22. In reply to this PO, Mr. Nyanda argued that there was nothing wrong to sue the

Regional Manager of TANESCO- Mara in his/her personal capacity. Mr. Nyanda reiterated his earlier statements that because the Respondent had already violated Rule 6(1) of GN. No.10 of 2013 all of her POs ought to be dismissed because they lack legal mandate. He stated that if he had been served on time by the Respondent, he would have responded to the defense submitted by the Respondent as allowed by rule 7 and would have had the opportunity to amend his complaint as provided for by rule 11(1).

We are in agreement with the Respondent's Counsel that the Respondent is a Public Corporation established under the laws of Tanzania with a legal status of suing and being sued in its own name. The Complainant ought to have sued TANESCO as a company and not a Regional Manager of the Company. TANESCO – Mara is just a part of TANESCO therefore it was not quiet correct to sue the RM- TANESCO – Mara.

While we are well aware that the Authority is a quasi-judicial body and therefore is not bound by the legal technicality but we cannot ignore the well settled principals of the laws in the sake of avoiding technicality. We find our hands are tied to the fundamental legal principles on issues relating to locus stand and and corporate personality. Therefore, based in our findings when deciding the Preliminary Objections, we hold that the Respondent's PO on the Mr. Nyanda's locus stand and improperly suing a wrong person are upheld hence this Complaint is struck out. No orders as to cost.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 31st day of October 2017.


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EDWIN KIDIFFU
SECRETARY TO THE BOARD