

**THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY**

**(EWURA)**

**COMPLAINT NUMBER EWURA/33/1/126**

**BETWEEN**

**SAMWEL MICHAEL MHINA..... 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 124<sup>th</sup> Extra-Ordinary meeting held at Dar es Salaam on the 8<sup>th</sup> day of August 2014)**

**1.0 Background Information**

On 30<sup>th</sup> January, 2012, the Energy and Water Utilities Regulatory Authority ("the Authority") received a complaint from Mr. Samwel Michael Mhina ("the Complainant") against the Tanzania Electric Supply Company Limited ("TANESCO") ("the Respondent") complaining about the fire incident that completely destroyed his house and properties which fire is alleged to have been caused by an electric fault. The Complainant argues that the alleged fire was caused by an over current which passed through a jumper wire put by the Respondent on transformer line number 3 connecting electricity to his house. The Complainant further argues that the jumper wire that was used instead of a proper (rated) fuse was not able to stop the over current and as a

result sparks occurred at the bracket and the lead-in-wire got burnt and thereafter fire erupted and spread to the LUKU meter and to the entire house. The Complainant argues that the said fire started on the wires supplying electricity to his house and thus putting responsibility on part of the Respondent.

The Respondent denies any liability alleging that, on that fateful day, its electricity supply system to the Complainant was inspected and found to be safe and intact. The Respondent further claims that following the conclusion of the inspection of the Complainant's system no sign of loose connection on the pole and the bracket were observed. Additionally, the Respondent argues that on the same day of the fire incident none of the Complainant's neighbours was affected.

Consequently, the Complainant claims from the Respondent, compensation for loss suffered as a result of the fire accident, as herein below:

- (a) TZS 70,000,000.00 being the value of the Premises that was destroyed by fire;
- (b) TZS 100,994,000.00 being the value of properties destroyed by fire;
- (c) TZS 350,000.00 per month being the cost of renting a house, as an alternative accommodation, from February, 2012 to the date of the delivery of the award;
- (d) TZS 50,000,000.00 being compensation for psychological torture;
- (e) TZS 1,500,000.00 being costs of replacing lost certificates; and
- (f) costs incurred by the Complainant for staying in a hotel for fourteen (14) days.

After receipt of the complaint and the reply thereto from the Respondent, efforts to mediate the parties by the Complaints Unit of the Authority were made and proved futile. The matter was therefore referred to the Division of the Authority on 20<sup>th</sup> July 2012, for hearing.

## 2.0 **Hearing Stage**

On 20<sup>th</sup> July 2012, the matter came for the first hearing and the Complainant was represented by James Ndyetabula, learned advocate while the Respondent was represented by Ms Batilda Mally, learned advocate. The following issues were framed for determination;

- (1) what was the source of fire?
- (2) whether there was negligence on either party?
- (3) whether either party suffered damage as a result of the said negligence? and
- (4) what reliefs the parties are entitled to?

Hearing of the complaint was conducted on 8<sup>th</sup> November 2012, 9<sup>th</sup> November, 2012, 7<sup>th</sup> March, 2013 and closed on 23<sup>rd</sup> April 2013, where both parties were ordered to submit their written closing submissions. We are very thankful for the submissions made by both parties.

During hearing, the Complainant Mr. Samwel Michael Mhina stood as the first witness (CW1), Ms Dafrosa Kamili, a neighbour, stood as the second witness (CW2), Mr. Salehe Ali Mohamed, officer from the Fire and Rescue Department stood as the third witness (CW3), Mr. John Joel Zambi, an economist from the National Housing Corporation, stood as the fourth witness (CW4) and Mr. Focasius Miku, a neighbour, stood as the fifth witness (CW5). The Respondent brought two witnesses, Mr. Amahawa Cosmas Mkaka, the Respondent's Electrical Engineer (RW1), Mr. Emmanuel Uno, the Respondent's driver Kinondoni North, Emergency Department (RW2), and Mr. Alamu Kiwohere Kanuti, the Respondent's electrician Mikocheni offices (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 is the source of fire**

It is not in dispute that the Complainant's house located at Makonde, Mbezi Beach Area caught fire on the evening of 21<sup>st</sup> January, 2012. It is also not in dispute that the Complainant's house was completely destroyed by the said fire. CW1 testified to the effect that he was not at the scene of the incident at the time of the fire; however, he was informed about it by his neighbour Mr. Focasius Miku (CW5). CW1 testified that he arrived at the scene twenty minutes later. CW1 further testified that the Respondent's officers arrived at the scene few minutes later after his arrival and they cut the wires supplying electricity to his house. In his oral testimony, CW1 argues that the jumper wire that was used in transformer line number 3 instead of a proper (rated) fuse was unable to stop an over current which caused sparks at the bracket and thereafter the lead-in-wire and the LUKU meter all of which belong to the Respondent caught fire.

CW2 testified that she lived three houses away from the Complainant's house. CW2 testified that on the day of the incident her house experienced an electric short circuit and thereafter she went for three months without electricity until when it was restored in April 2013. CW2 further testified that she believed that electricity was the source of the fire as she saw fire at the pole connecting power to the Complainant's house.

CW3 testified that based on his experience on the job, he believes that the fire started from the wires supplying power to the Complainant's house. During cross-examination by the learned counsel for the Respondent, CW3

RW1 testified that there are several factors that could have started a fire at the Complainant's house and some of those factors are, if a live and neutral wire or two livewires come into contact, improper size of wiring, defective circuit breaker, worn out wires, loose connections and improper earthing, all of which he said fell under the mandate of the Complainant. RW1 testified that during the inspection it was revealed that electricity lines were fine.

RW3 testified that the blown out fuse on transformer line number 3 was successfully replaced and that a good circuit breaker would be able to handle any electric fault that could have occurred. RW3 further testified that the burnt fuse was replaced around 22:00 hours and the house caught fire the following day at 17:00 hours. In his opinion, the difference in time between the replacement of the blown fuse and burning of the house shows that the Respondent could not have been responsible for the fire.

We have examined all the testimonies and evidences tendered, together with the closing submissions by the parties. We have noted that Exhibit "C2" categorically states that the source of fire is unknown. Apart from the fact that Exhibit "C2" is not conclusive as to the source of fire, it identifies the point of fire which, in our opinion, may be useful in determining the possible cause of fire. Exhibit "C2" states that, the fire started from the pole supplying electricity to the Complainant's house. This theory is supported by oral testimonies of two eye witnesses CW2 and CW5 who testified to have seen fire starting from the Respondent's supply system. During re-examination CW2 testified that the fire started at the pole connecting power to the Complainant's house. Furthermore, CW5 testified that he saw fire at the bracket supplying power to the Complainant's house from.

Also, the fact that CW2 and CW5 experienced power problems on the fateful day proves on the balance of probabilities that the fire started at the pole supplying power to the Complainant's house as suggested by RW1 and RW3. Furthermore, we have seriously considered the testimony of CW2, who

stated that on the day of the incident her house experienced an electric short circuit and thereafter she went for three months without electricity until April, 2013 when they changed the wire on her pole. CW5 testified that on the day of the incident they experienced multiple power cuts in their area followed by an explosion. CW5 also said that two of his bulbs burst.

In her final submission, Ms Mally, the learned counsel for the Respondent stated that the Complainant admitted that his neighbours did not experience any power problems on that day. However, and with due respect to the learned advocate, we are unable to agree with her submission as there is nowhere, be it during the hearing or in closing submissions, the Complainant has made such admission. The assertion by the Respondent's counsel is a direct contradiction of and can be challenged by the evidences of CW2 and CW5.

Furthermore, whereas RW1 and RW3 vehemently disputed the fact that a jumper was used in transformer line number 3 that supplies power to the Complainant's house, neither of them could explain why the fuse on that line as shown in Exhibit "C1"-5 is not clearly visible as in the other lines. If the same type of fuse was used on transformer line number 3, Exhibit "C1"-5 would have clearly illustrate so. That not being the case, we tend to agree with the Complainant that a different type of fuse was used on a transformer line number 3 that supplies electricity to the Complainant's house. In addition, it is our considered opinion that the Respondent has failed, albeit on balance of probabilities, to explain why the previous fuse wire was burnt.

Although RW1 associated the blown fuse on transformer line number 3 with high power consumption due to increased number of customers, he did not adduce evidence to support his argument. It is our considered view that, technically, a blown out fuse is a result of an over current.

RW1 gave contradicting statements with regard to the state of the lead-in-wire at the time after the fire incident. RW1 testified that the wires supplying

power to the Complainant's house were in good condition but worn out because of fire. However, during cross examination, RW1 acknowledged that the lead-in-wire got burnt and he further testified that it was burnt after being cut off.

Furthermore, site inspection conducted by the Division of the Authority revealed that the Complainant is being supplied power from transformer line 3. The inspection also revealed that the blue cable supplying power to the Complainant's house is black at the tapping point which indicates that at least at one time there was fire, heat or smoke that changed the insulator colour from blue to black. It is our further observation that since the jumper wire that was used by the Respondent as the fuse in the circuit supplying power to the Complainant's house was different from other fuses in the same transformer before the accident implies that the original fuse in that particular circuit was either damaged or burnt due to overload.

In summing up, when you consider the contents of Exhibits "C1" and "C2" the observations made by the Division of the Authority during the site visit and the testimonies of CW2, CW3 and CW5, it is not hard to see that the source of fire was rather external than internal. The fact that fire started from the wires supplying power to the Complainant's house is evident that the source of fire was on the Respondent's supply system and, from the evidence, an over current was most likely the source. Also, looking at Exhibit "C1", it shows that the top of the Complainant's house, where the power enters the house, was the most affected area hence suggesting that fire started from outside and not inside. As stated before, it is our considered opinion that the jumper wire that was used as a fuse on transformer line number 3 was technically not capable of protecting electricity supply system against an over current. The fact that there were power fluctuations leading to an explosion and the fact that, at the time of the fire incident, several other persons were also affected suggest serious malfunctioning of the Respondent's supply system at the time the incident occurred.

Based on the foregoing and in the final analysis we are satisfied that the Complainant has discharged the burden in proving that the source of fire that destroyed his house was an electric fault caused by the Respondent.

**Issue No. 2: Whether any party was negligent on the matter?**

In determining negligence of a party, the burden of proof lies on the party alleging 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.

It is no doubt that the Respondent has a duty of care towards its customers for all that part before the meter. This means that, the Respondent owes the Complainant the duty of care to ensure that the system from the meter to the generation point functions properly as per the laws and good electricity industry practices. From our holding in the first issue the cause of the fire that destroyed the house has been attributed to an electric fault by the Respondent. This means that the Respondent, who owed the Complainant a duty of care, has breached such duty due to the use of a jumper wire instead of a proper (rated) fuse on a transformer line three that could have prevented an over current. As a result of such breach the Complainant's house was completely destroyed by fire, a fact which is not disputed by the Respondent.

Based on the foregoing, we are satisfied that the Respondent owed the Complainant a duty of care and such duty was breached and as a result, the Complainant has suffered loss and this is our decision.

**Issue No. 3: Whether the Complainant suffered any damage as a result of the said negligence?**

Exhibit "C1-2-3" shows that the Complainant's house was completely destroyed by fire. The burden of proof is on the Complainant to show that he

suffered damage. The Complainant testified that it cost him TZS 70,000,000.00 to build his house back in 2004. In absence of a valuation report, we were guided by the Bills of Quantity admitted as Exhibit "C4", to ascertain the costs of building the house. The costs therein reflect the amount claimed to have been incurred by the Complainant in 2004 and hence we are satisfied that the he has successfully proved his claim.

Whereas it may seem logical to allow for the claim for payment for the lost properties, we find it difficult to do so due to the fact that apart from the list of lost properties submitted together with the Complaint Form no other evidence was given to prove such claim. The claim for payment for lost properties, being of special damages, needs to be strictly proved and the Complainant has failed to do so. We have therefore decided to disallow the claim for payment of TZS 100,994,000 being the value of the properties destroyed by fire. Furthermore, it is our holding that the Complainant has failed to submit evidence to support his claim for the costs he incurred for staying in a hotel and for renting an alternative house. In the absence of such evidence we are equally unable to allow such costs.

Furthermore, while we do not doubt that the Complainant was very much affected by the loss of his house, we fail to see how he arrived at the proposed figure of TZS 50,000,000.00 as compensation for psychological torture. We may be tempted to allow for a nominal figure that we believe may console the Complainant for all the losses he suffered.

**Issue No. 4: What reliefs are the parties entitled to?**

Based on the foregoing and in the final analysis we have decided that the complaint be allowed and:

- (a) the Complainant be entitled to the payment of TZS 70,000,000.00 from the Respondent being the value of his house that was destroyed by fire;
- (b) the Complainant be entitled to the payment of TZS 10,000,000.00 from the Respondent being compensation for psychological torture and sufferings; and
- (c) the Respondent shall bear the costs of this complaint.

**GIVEN UNDER SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 8<sup>th</sup> day of August 2014.

  
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**Felix Ngamugosi**  
**DIRECTOR GENERAL**