

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

COMPLAINT NUMBER: EWURA 71/135/16

**VIOLET E. KISANGA FOR AND ON
BEHALF OF DANIEL MOLLEL.....COMPLAINANT**

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT

AWARD

*(Made by the Board of Directors of EWURA at its 133rd Ordinary Meeting held at
Dar es Salaam on the 30th day of October, 2018*

1.0 Background Information:

On 10th January, 2018 Ms. Violet E. Kisanga for and on behalf of Daniel Mollel a resident of KDC Area within the Municipality of Moshi ("the Complainant") filed a complaint at the Energy and Water Utilities Regulatory Authority ("the Authority") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The Complainant disputes the claim of a utility debt by the Respondent of the sum of TZS 7,931,214.14.

The Complainant states that she moved in the suit house which is house number HSE NO. A 10/12 KDC KDC Area owned by the Moshi District Council in 2014. That the house was to be shared by two people, the Complainant and one Rose Vitalis. The Complainant continues to state that upon moving in they found just one meter although the said house was partitioned into two apartments. The meter found in the house was

registered in the name of Daniel Mollel. The Complainant further states that there was no electricity service at the time so she went to the Respondent's office to inquire where she was told that there was a debt on the Mr. Mollel's meter account of the sum of TZS 734,000.00. The Complainant explains that she was advised to apply for relief which she did by filling in a form and consequently the debt was reduced to only TZS 150,000.00. She says she paid TZS 50,000.00 in advance and paid the rest in a few days later. She concludes that the electricity supply service was restored upon payment of the first installment. The Complainant further states that she asked for replacement of the Conventional meter with a LUKU meter which was done on 17th October, 2017. The Complainant explains that after a week from when the meter was changed she purchased electricity and realized that a debt was credited to the meter account and deductions were being made at the rate of 50% of each LUKU purchase. Upon inquiring from the Respondent she was informed that the house had two meters and since neither the second meter nor the customer by the name of G.M Sakulu who used it could be found they had decided to credit its debt in the Complainant's LUKU account because it is the same house. Being dissatisfied by the explanations offered by the Respondent, the Complainant filed this complaint to the Authority. Eventually according to the Complainant the Respondent stopped the deductions in August, 2018.

Upon receipt of the Complaint, the Authority ordered the Respondent to file a reply/defence to the Complainant's claims via the summons to file defence served on 15th January, 2018. The Respondent replied on 25th January, 2018 and stated that the premises in question had previously been supplied with two conventional meters one in the name of GM. Sakulu and another in the name of Daniel Mollel. That, the disputed debt is a lawful debt which originates from a conventional meter registered in the name of G.M. Sakulu. The Respondent further stated that they discovered that there was a fraudulent act of removing the conventional meter registered in the name of G.M. Sakulu from the premises to conceal the debt. On that basis

they decided to credit the said debt into the account of Mr. Mollel's meter which by then had been changed to a LUKU meter with number 24218220606 still in the name of Daniel Mollel and still at the same premises. The Respondent concluded with a prayer that the Complaint should be dismissed and the Complainant be ordered to pay the bills.

Efforts to resolve the dispute through mediation did not succeed thus; the matter was referred to the Division of the Authority for hearing.

2.0 Hearing Stage:

During hearing which took place on 9th and 10th October, 2018, the Complainant was represented by Mr. Kalua learned Advocate whereas the Respondent was represented by Mr. Kalonda Kibamba, learned advocate and Zonal Legal Officer of the Respondent in charge of the Northern Zone. The following issues were framed for determination:

2.1 *Whether the Respondent's claim for TZS 7,931,231.14 against the Complainant is lawful;*

2.2 *What remedies if any are the parties entitled to?*

At the hearing the Complainant testified as the first witness "**CW1**" and tendered four exhibits namely the a certified copy of a letter to the District Executive Director for Moshi District Council dated 17th January, 2014 as exhibit "**C1**", application for Account Incentive admitted as **Exhibit** "**C2**", electricity Bill of Mr. G.M Sakulu dated 25th October, 2017 admitted as **Exhibit** "**C3**", and electricity Bill of Mr. Daniel Mollel dated 19th April 2017 Admitted as Exhibit "**C4**". The Complainant's side also called one Bildard Epafra Ngowi an Office Attendant who testified as "**CW2**".

The Respondent on the other hand had three witnesses namely Renatus Respic Mushi the Public Relations and Customer Service Officer for Kilimanjaro Office as "**RW1**", Ahmed Ally Mangwenya a meter Supervisor as RW2 and Robson Chaya, the billing Accountant as "**RW3**".

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, Government Notice Number 4 published on 13th January, 2017, and The Electricity (General) Regulations Government Notice number 63 published on 4th February, 2011. The Authority has also considered the oral testimony of the witnesses together with documentary evidence tendered during the proceedings. The decision on the issues raised is as follows:

1.1 Whether the Respondent's claim for TZS 7,931,231.14 against the Complainant is lawful;

Looking at the facts of the complaint and testimonies from witnesses, we may sum up that it is not in dispute that Ms. Violet E. Kisanga who brought this Complaint on behalf of Daniel Mollel resides in house No. A 10/12 KDC which is owned by Moshi District Council. That when she moved in in 2004 electricity supply services were suspended due to outstanding utility debt on a meter registered in the name of Daniel Mollel the former tenant and that she paid the outstanding debt which was reduced from TZS 734,000.00 to 151,008.57 upon application for incentive. It is also not in dispute that the conventional meter registered in the name of Daniel Mollel was replaced with a LUKU meter on 24th April, 2017 and that a debt of ***TZS 7,931,231.14*** belonging to a meter registered in the name of G.M. Sakulu was credited in the account of Mr. Mollel's meter on the 24th April, 2017 and deductions commenced on the 24th October, 2017 until 24th August, 2018.

In resolving this issue we have evaluated the oral testimony of all the witnesses and the documentary evidence tendered. To begin with CW1 who testified that she was shocked on 24th October, 2017 when she purchased electricity for the LUKU meter which was installed in April, 2017

to find out that there was a deduction of 50% of the amount she purchased electricity. Upon inquiry she was told by the Respondent that a debt owed to one G. M Sakulu who once used the same house and used meter No. 00222471 was credited to Mr. Mollel's meter account. No further justification was given for doing so. CW1 disputes the crediting of this debt to Mollel's account which she operates. She further insisted that there was only one meter when she moved in the house despite the fact that the house was divided into two apartments. She said she occupies the part of the apartment where Mr. Mollel lived and the other side was occupied by one Rose Vitalis who has recently vacated the premises and cannot be traced. She stated that they both shared one meter which is registered in the name of Daniel Mollel. The witness further states that she tried to find out who is G.M. Sakulu and therefore she inquired at the office of the District Executive Director but they denied having an employee of that name, she went to the post office to find out who owns the address used by G.M Sakulu where she was told it is owned by one Alex Tarimo. However, the said Alex Tarimo who is now deceased denied knowing Mr. Sakulu in detail other than someone who received his mails via his address. The tracing therefore reached a dead end. A similar version of the story was given by CW2 who testified that he has been an employee of the Moshi District Council for over twenty years but has never known an employee with the name G. M Sakulu. He also said that he knew Mr. Daniel Mollel and that he worked for the Council as the Planning Officer. CW2 further says his duties included collecting Council bills and ensuring they are paid since previously all bills on employees houses were paid by the Council. All the three witnesses of the Respondent testified that the said G. M Sakulu lived in the same house as Daniel Mollel and that the said house had two separate meters for the two apartments. They further said Mr. Sakulu's meter recorded a last reading in 2003 and since then they have never heard from him. RW2 stated that he discovered in 2014 that Mr. Sakulu's meter had been removed. He said he reported back to his superiors but was not sure whether the matter was reported to police. RW1 said he tried to trace Mr. Sakulu at both District Council and Regional Commissioner's

office but he was told there was no record of him. All the Respondent's witnesses admit that the debt accrued on Mr. Sakulu's meter was credited to Mr. Mollel's meter upon discovery that Mr. Sakulu's apartment which was once supplied by a separate meter was now connected to Mr. Mollel's meter. According to these witnesses they assumed that the residents had conspired to defraud the Respondent and therefore decided to credit the debt into Mr. Mollel's meter without notice.

We have examined all the testimonies and evidences tendered, together with the final submissions by the Complainant. There is no doubt or dispute that the Respondent does not have a claim against Mr. Daniel Mollel in as far as meter number 11221563 which was replaced by LUKU meter No. 24218220606 is concerned. Mr Mollel's outstanding debt was paid as per exhibit "C2" an application for incentive which shows that a relief was granted and the debt discounted from TZS 734,000.00 to 151,008.22. Further to that the last bill on Mr. Mollel's conventional meter dated 19th April, 2017 was paid in full and the bill "C4" is stamped "PAID". Thereafter a LUKU meter was installed.

We have further considered the possibility that the house in question was installed with two separate meters. The complainant's witnesses vehemently denied the fact that there were two meters and instead contend that the house had only one meter registered in the name of Mr. Daniel Mollel. We have looked carefully at exhibit C3 Mr. Sakulu's bill and C4 Mr. Mollel's bill and noted that the two bills bear different names, postal addresses, meter number, customer reference and property reference. The only similarity is that both customers' addresses are in Moshi. We asked ourselves whether it is possible for two meters installed at the same property to have different property references and whether it is proper for one meter's debt to be transferred to another meter's account even if the two are installed at the same property. The property Reference on Mr. Mollel's meter is G61.56.25809 whereas that of Mr. Sakulu is G63.39.0550 the latter is not supported further with a physical address in terms of house number as it is the case with Mr. Mollel's address which

clearly states that HSE NO. A 10/12 KDC. The Respondent's side did not produce any information or written details in relation to application and installation of Mr. Sakulu's meter, his Supply Service Contract, sketches or Account statements to justify the accrual of the debt itself if any and the location of the meter.

Upon visiting the house in question we observed that the house has a partition which divides it into two apartments with the complainant residing on the side where Mr. Daniel Mollel once resided. The other side is currently unoccupied. The current LUKU meter is installed outside on the top fisher board of the backside and the main switch and circuit breaker remains at the front veranda where the former meter was installed. The Respondent's side contends that, it is at this veranda that the said two meters had been previously installed. It was difficult for us in the absence of further evidence such as installation card, service agreement or sketch drawings to conclude that there existed two meters at the suit house.

Having considered all these facts, circumstances and the evidence we came to the conclusion that the Respondent had a duty to prove that an account in the name of G.M Sakulu existed and had accrued a debt amounting to TZS 7,931,231.14. In this respect they did not produce evidence of existence of such an account or account statement to show how the debt accrued. The exhibit C3 a bill of Mr. Sakulu tendered by CWL is not conclusive proof and was not relied upon or referred to by the Respondent as proof of the debt.

We have further satisfied ourselves that The house in question is owned by the Moshi District Council formerly called KDC and is used for residence by Council employees. That, Mr. Sakulu and Mr. Mollel are two different individuals whom there is no evidence they ever shared a house. Further to that there is no evidence that Mr. Sakulu was an employee of the Council as compared to Mr. Mollel. Had it been so, the Council would have no interest in concealing that information to the Respondent. The said persons have different addresses and their bills have nothing linking or connecting them to one another. We are of the view that had the two meters been installed at the same property then they should have had the same property reference

or at least the same physical address. We therefore dismiss the submission that the said Mr. Sakulu ever lived in the Council house which was also occupied by Mr. Mollel and declare that the meter registered in Mr. Sakulu's name has never been installed on the said Council house No. A 10/12 KDC.

We have further considered whether there was any justification for crediting the said debt into the Complainant's account. On this the Respondent's witnesses said that due to the malpractice committed by unknown persons leading to the loss of Mr. Sakulu's meter and upon discovery that Mr. Sakulu's apartment was supplied from Mr. Mollel's meter they decided to credit the said Mr. Sakulu's debt to Mr. Mollel's account. The Respondent's witnesses were asked to state any legal basis for their action but could not do so. Even in the submissions made by the Respondent's Counsel yet he could not state the legal basis for the Respondent's action. We could find neither a provision in the law nor facts upon which the Respondent's action can be justified. As pointed out above and based on the findings and analysis above we do not find any justification of debiting from the account of the Complainant or requiring the Complainant to pay somebody else's debt. The two persons are different customers, with different meters, references and accounts. There is therefore no basis for requiring or claiming from one customer the debt owed to another customer.

Be it as it may as an *orbiter dictum* even if it would have been proved that Mr. Sakulu ever lived in the premises which Mr. Mollel also resided whether at the same or at different periods, there would still be no justification to credit Mr. Sakulu's debt into Mr. Mollel a fellow tenant's account. If a tenant leaves behind a debt the service provider should either take up the matter with the land lord or suspend electricity supply service at the relevant account only.

Based on the foregoing we find the Respondent's claim for TZS 7,931,231.14 from the Complainant to be wholly unjustified and of no legal basis. Consequently the Complaint is hereby allowed and the Respondent ordered to refund the Complainant all the sums deducted from electricity

purchases for LUKU meter no. 24218220606 from 24th October, 2017 to 24th August, 2018. The Respondent is further condemned to pay costs of the Complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dar es Salaam this 30th day of October, 2018.



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NZINYANGWA E. MCHANY
DIRECTOR GENERAL