

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

COMPLAINT NUMBER SN.71/472/25

FELISI MAHOOS.....COMPLAINANT

VERSUS

**CHALINZE WATER SUPPLY AND
SANITATION AUTHORITY.....RESPONDENT**

AWARD

*(Made by the Board of Directors of EWURA at its 149th Ordinary meeting held at
Dodoma on the 27th day of February, 2020*

1.0 Background Information

On 6th May, 2019, the Energy and Water Utilities Regulatory Authority ("the Authority") received a complaint from Mr. Felisi Mahoos of P.O.Box 1015, Kinondoni District, Dar es Salaam Region ("the Complainants") against the Chalinze Water Supply and Sanitation Authority (CHALIWASA) ("the

Respondent"). The Complainant is complaining against the allegedly unjustified disconnection of water supply services and the unlawful demand of TZS 2,500,000.00 imposed by the Respondent as penalty for the alleged water theft at his farm at Kiangaiko Street in Msata Area, Chalinze District in Coast Region.

The Complainant claims that on 11th January, 2019 the Respondent disconnected water supply at the Complainant's farm without notice due to allegations of water theft. The Complainant claims further that the Respondent's officers arrived at his farm, disconnected water services without any notice and thereafter, Police Officers arrived at the farm and apprehended the farm care taker who is the only person residing at the farm. The Complainant claims that he was informed of the arrest and he went to the Police Station in order to resolve the matter. The Complainant states that he was forced by the CHALIWASA Officers to pay the fine of TZS 2,500,000.00 for the alleged meter bypass, of which he paid TZS 700,000 without proper procedures being followed. Consequently, the Complainant states that he filed this complaint to the Authority praying for orders to compel the Respondent to restore water supply services to his farm, cancel the fine of TZS 2,500,000.00, and pay damages for loss suffered.

Upon receipt of the complaint, the Authority required the Respondent to file the reply to the complaint in terms of Rule 5(1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, 2013. The Respondent filed the reply accordingly and paved way for further processes on the complaint. In reply to the complaint, the Respondent states that the Complainant, with meter number 5182167 and who has been a CHALIWASA customer since 1st May 2016, had bypassed the Respondent's meter and was thus getting water supply services contrary to the law.

The Respondent states that for anyone bypassing a meter, the Respondent is obliged by the law to disconnect water services immediately. In addition, the Respondent states that at the scene they found a water pipe behind the meter that was cut and the Complainant was using water for irrigation and commercial purposes. The Respondent states that the Complainant's initial water supply application was for domestic use but the Complainant arbitrarily changed the use to commercial without informing the Respondent, contrary to their services agreement.

The Respondent also states that the Complainant agreed to pay the fine of TZS 2,800,000.00 and he paid TZS 700,000.00 as per the agreement entered into between the Respondent and the Complainant and an ordinary handwritten receipt was given to the Complainant for that payment. Furthermore, the Respondent states that the Complainant was not forced to pay the fine but he paid part of the fine after confessing that there was indeed a meter bypass at his farm. The Respondent stated that water services will be restored at the Complainant's farm once TZS 1,800,000 has been paid.

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 16th and 17th October, 2019 at Drive Inn Msata Hotel in Chalinze District in Coast Region and both parties appeared. The

Complainant was represented by Alfred Swai, learned advocate while the Respondent was represented by Bonaveture Mtesigwa, the Respondent's Commercial Officer. The following issues were framed for determination:

- a) *whether the Respondent's act of disconnecting water services from the Complainant's premises was justifiable?*
- b) *whether the Complainant suffered any loss resulting from the disconnection;*
- c) *whether the agreement for payment of fine of TZS 2,500,000.00 is enforceable by law?*
- d) *what are the reliefs to the parties, if any?*

During hearing, the Complainant stood as the only witness and tendered various pieces of evidence whereas the Respondent's side brought four witness namely Mr. Bonaveture Mtesigwa, the Respondent's Commercial Manager who tendered documentary evidence, Mr. Kivugo Kingazi, the Respondent's Accountant, Police Constables Mbenea Jofrey Mbenea and Abubakari Salehe Mwidadi. Both parties submitted final closing submissions.

3.0 The Decision

In arriving at our decision, we have considered the applicable laws which include the EWURA Act, Cap. 414, the Water Supply and Sanitation Act, 2009, which is now repealed and replaced by the Water Supply and Sanitation Act, 2019, the CHALIWASA Customer Service Charter, the Water Supply and Sanitation Regulations GN.90/2013, the Water Supply and Sanitation (Quality of Service) Rules, 2016, GN 176/2016 and the EWURA (Consumer Complaints Handling Procedure) Rules, GN. No.10/2013. We have also considered the oral testimonies of the witnesses, the

documentary evidence tendered during the proceedings as well as the final written submissions. Our decision on the issues raised is as follows:

3.1 Issue No. 1: Whether the Respondent's act of disconnecting water services from the Complainant's premises was justifiable?

It is a trite law that he who alleges must prove and in this matter, the Complainant is duty bound to prove, on the balance of probabilities, that the act by the Respondent of disconnecting water services at his farm is unjustifiable. The Complainant is facing allegations of water theft by tampering with the water supply infrastructure of the Respondent and diverting water from the meter thereby causing a revenue loss of TZS 2,500,000.00 to the Respondent. In determining this issue, we have evaluated the testimonies of the Complainant (CW), RW1, RW2, RW3 and RW4 and further examined the only evidence, a contract and payment receipt which was tendered by CW and admitted as Exhibit "C1".

It is not in dispute that the Complainant is a customer of the Respondent's since 2015 and that he owns a farm in Kiangaiko Area in Msata, Chalinze District, Coast Region. The Complainant testified that he was called to the Police Station by his caretaker after the Respondent's Officers had arrested him and ordered the Complainant to pay TZS 2,500,000.00 as the fine for an alleged meter bypass. The Complainant testified that he was told that if he wanted the caretaker to be released from custody, he has to pay the above mentioned fine. The Complainant also testified that he agreed to pay some of the fine to the tune of TZS 700,000.00 in order for the caretaker to be released from Police custody and begrudgingly entered into an agreement with the Respondent to pay the remaining amount of TZS 1,800,000.00 by 25th January 2019. The Complainant tendered Exhibit "C1", which is the agreement dated 11th January 2019 together with the receipt of payment

dated 14th January 2019 for payment of TZS 700,000.00 as part payment of the fine.

During cross examination, the Complainant admitted that his application for water services was for domestic purposes but also admitted that he was conducting farming activities at his farm but claimed that his produce was for normal consumption and not for business. The Complainant stated further that he had 800 pawpaw trees and 200 banana trees. The Complainant also stated that the Respondent never informed him that he was consuming more water than was being paid for and he used to pay all his bills which were normal for residential activities. In his final submissions, the Complainant argued that the Respondent did not notify him that there was an unlawful connection of water services at his farm by way of a meter bypass before disconnection of water services, as required by Regulation 51(1) (e) of the Water Supply and Sanitation Regulations GN.90/2013. The above mentioned Regulation and we quote:

"Without prejudice to the generality of the powers of a water authority stipulated in the Act or under these Regulations, a water authority may suspend the supply of water with notice either wholly or partly to any consumer in any of the following circumstances- (e) the consumer is in breach of any of these the provisions of Regulations"

The Complainant added that Regulation 51 (2) of GN.90/2013 provides that the notice to be issued under sub-regulation (1) be in a form prescribed in the Sixth Schedule to the said Regulations. The Complainant concluded by stating that the Respondent did not follow the procedures required by law for water disconnection therefore the disconnection was unlawful and unjustifiable.

On their part, RW1 testified that during a routine inspection, they inspected the Complainant's farm and found that their meter had been bypassed and the Complainant was using water in a way that diverts the water with a pipe so that it does not go through the meter and therefore remaining unread by the meter and unaccounted for, and thus causing revenue loss to the Respondent. The pipe seen at the farm, was also covered with grass and a brick in order to conceal the illegal activity. RW1 also testified that he spoke to the caretaker in Sukuma Language and the caretaker confessed to there being a bypass at the farm and proceeded to show them where the bypass was located. RW1 stated that he spoke to the Complainant over the phone and explained the requirement to pay a fine of TZS 2,500,000.00 for tampering with the Respondent's infrastructure. RW1 also stated that they called the Police Officer so that the caretaker could be taken to the Police Station and then to Court. RW1 further stated that the Complainant agreed to settle the matter with the Respondent amicably by agreeing to pay TZS 700,000.00 on the spot and the rest of the amount to be paid by 25th January 2019.

During cross examination, RW1 testified to the effect that the Respondent's Customer Service Charter allows for water services disconnection where there is a debt or a meter bypass. When asked by the Complainant's advocate, RW1 stated that prior notice of disconnection was not given to the Complainant but notice was given to the Complainant after speaking to him. RW2, the Respondent's Accountant stated that he received a phone call from the Respondent's Managing Director who told him to go to the Police Station to report a meter bypass. RW2 left with the Police Officer to the farm and found the caretaker there who was interrogated and denied knowing anything about the bypass. The caretaker also said that he would call the Complainant so that the Respondent's Officers could speak to him and sort this matter. RW2 stated that he left with one Constantine Uliza to meet the Complainant who then agreed to pay TZS 2,500,000.00 as a fine for the meter bypass.

RW2 further stated that he read the payment agreement to the Complainant before Police Constable Mbenea Jofrey Mbenea and the Complainant paid TZS 700,000 and undertook to pay the rest by 28th January 2019. However, on the agreed date, the Complainant refused to pay the rest of the amount as previously agreed saying that there was no meter bypass and the disconnection of water services was not justified. When asked by the Respondent as to who conducted the inspection at the farm, RW2 stated that there was a special team that conducted the inspection and discovered the bypass.

On his part, RW3, a Police Officer testified that on 11th January 2019, the caretaker was brought to the Police Station for an alleged meter bypass at the Complainant's farm and the caretaker said that the Complainant would come to the Police Station and pay the requisite fine so that he can be released. The Complainant was told to pay the fine of TZS 2,500,000.00 and RW3 witnessed the payment of TZS 700,000.00 as part payment thereof. RW4, a Police Officer testified that he received a phone call from the Head of the Police Station and went to the farm with the Respondent's Officers and when he arrived there, he saw that there was indeed a meter bypass and also found a caretaker there who was taken to the Police Station.

In his closing submissions, the Respondent stated that as a Government entity, they are obliged to immediately prevent revenue loss where an illegal activity is discovered such as a meter bypass. The Respondent quoted section 62 (1) of the new Water Supply and Sanitation Act, 2019 which states that:

"Any person who abstracts or draws off from water works water using a pipe, drain, pond, pump or other means whereby water may be

conveyed or retained contrary to the provisions of this Act commits an offence".

In addition, in his final submissions, the Respondent stated that the Complainant's application for water services was domestic but the Complainant admitted to irrigating 200 banana trees and 800 pawpaw trees which is an extensive project of a commercial nature requiring a lot of water. The Respondent stated that when he visited the locus in quo, he indeed saw that the Complainant was watering more than 1,000 tree seedlings which is commercial in nature and thus contravening Section 65 of the Water Supply and Sanitation Act 2019.

The Respondent stated that the Government has tasked all public utilities to collect all revenue from their customers and the Complainant deliberately deprived the utility of its fair share of revenue through illegal water connection therefore depriving the Government of its dues. Moreover, the Respondent argued that water disconnection was justified because the Complainant had bypassed the Respondent's meter to irrigate his large farm and pay less than required. The Respondent concluded that disconnecting water services was a crucial step towards preventing continuation of revenue loss to the Respondent and to the Government in general.

We have examined all the testimonies and evidence tendered by the parties together with their submissions and we are very thankful for the submissions. The question before us is whether the Respondent unjustifiably disconnected water services at the Complainant's farm. Upon a site visit by members of the Division of the Authority and the parties on 17th October 2019, it was observed that there was a four acre piece of land with about 200 flourished banana trees, a heap of dumped dried seedlings claimed by the Complainant to be among the 800 pawpaw plants that

perished due to lack of water, two plastic water storage tanks of 4000 litres each placed on a raised base, some pieces of 25mm (0.75 inches) PVC scattered around, roofed semi-permanent house and open underground water reservoir located within a farmyard.

Before answering this question, we are obliged to find out, what steps need to be taken by a licensee before disconnecting services at a customer's premises. The applicable laws in this situation are the Water Supply and Sanitation Act, 2009, the Water Supply and Sanitation Regulations GN.90/2013 and the Water Supply and Sanitation (Quality of Service) Rules, 2016, GN 176/2016. Regulation 51(1) (e) of GN.90/2013 states that:

"Without prejudice to the generality of the powers of a water authority stipulated in the Act or under these Regulations, a water authority may suspend the supply of water with notice either wholly or partly to any consumer in any of the following circumstances:

- (a) (NA)
- (b) (N/A)
- (c) *the consumer is in breach of any of these the provisions of Regulations"*

Further, Regulation 51 (2) of GN.90/2013 also states that:

"The notice referred to in sub-regulation (1) shall be in a form prescribed in the Sixth Schedule".

On the other hand, Rule 30 (b) and (f) of GN176/2016 states that:

"Without prejudice to the generality of any powers and rights given under these rules, a licensee may disconnect the supply of water without notice to any customer where:

- (a) a customer's service or connection with the waterworks is found to be not in conformity the Act and these rules; and*
- (b) there is a breach by a customer of any of these rules.*

Looking at the two rather contradicting laws, the former provides for notice before disconnection but the latter requires no notice where a customer's connection with the waterworks does not conform to the Act. Sub-Rule (b) of GN176/2016 refers to the Water Supply and Sanitation Act, 2009 and section 49 (1) of this Act states that:

"Any person who alters or causes or permits to be altered any appurtenances with intent to avoid the accurate measurement or register of water by means of any meter or to obtain a greater supply of water than he is entitled to or to avoid payment for the supply of water or who willfully or negligently interferes with or damages any meter, commits an offence".

The Complainant owns a four acre farm with 800 pawpaw trees and 200 banana trees as well as rearing more than 60 goats. The Complainant stated that only the caretaker lives on the farm and that the produce from the trees is for personal consumption. Looking at the size of the farm, the number of trees and animals at the farm and the fact that only one person resides at the farm, it is more probable than not that the farm is for reasons other than personal consumption. It is a large enough project to be of a commercial nature therefore necessitating use of a lot of water for its

running and maintenance. In contrast, the Complainant stated that the farm consumes 20-40 units per month costing about TZS 70,000 per month which is unrealistic given the magnitude of the farming.

We are more inclined to invoke the relevant provisions of GN 176/2016 over GN90/2013 in that no disconnection notice is required where a customer's connection with the waterworks is found to be not in conformity with the Act and the above rules. Our reasoning is simple, it defies common sense to allow a person to continue with violation just to give him/her a notice of disconnection. As per the good water industry practices, in cases of water theft, disconnection without notice is the appropriate measure a licensee may take.

In further holding to the above, RW1 stated that the caretaker confessed to their being a bypass and showed him where it was. In addition, when the Complainant was first told of this incident, he agreed to settle the matter and pay the requisite fine demonstrating his acceptance of a bypass and entered into an agreement for payment of the fine and later refused to pay the rest of the agreed amount. In addition, during the site visit, members of the Division saw a flexible yellow pipe connecting two ends of the utility's pipes before the flow meter whose uses could include water diversion from the meter although evidence of this was unclear.

Looking at the circumstances of the case, it is more probable than not that there was foul play at the farm and a possible meter bypass. We are in agreement with the Respondent that they are obliged to curb any revenue loss resulting from any illegal activity such as a meter bypass. In the event of a meter bypass, a prudent man would not give notice of disconnection as a result of an illegal activity and allow the illegal activity to continue until the notice has lapsed in time.

As much as the Respondent has mistakenly quoted the newly enacted law namely sections 62(1), 64(1) and 65(1) of the Water Supply and Sanitation 2019 which is not applicable in this complaint, we have considered all the facts above and our analysis is based on the requirements of the Act, Rules and Regulations. We have specifically looked at section 49(1) of the Water and Supply and Sanitation Act, 2009 Cap 272 and we are satisfied that, the disconnection of water supply services by the Respondent at the Complainant's farm was justified as the admission by the farm caretaker of a bypass, acceptance by the Complainant to initially pay the fine resulting from the bypass demonstrates an incentive to avoid accurate measurement of water to save on water bills resulting from this farming project.

Thus, looking at the evidence and circumstances in this matter we are, on balance of probabilities, tempted to believe that the Complainant diverted water supply before reaching the meter thereby using unmetered water and thus making the disconnection justifiable.

3.2 Issue No.2: Whether the Complainant suffered any loss as a result of the water disconnection?

The Complainant stated that he lost 800 pawpaw trees that dried up due to lack of water with each tree costing TZS 3,000, 200 banana trees each at TZS 60,000, four return trips to the farm with each trip costing TZS 80,000 of fuel, TZS 80,000 for each month. The Complainant also bought water through water boozers and incurred costs in taking care of the farm after the water services disconnection.

As we have found in the first issue that the water supply disconnection at the Complainant's farm was justified; it follows therefore that the

Complainant's claims against the Respondent for losses suffered find no pillars to hang on.

3.3 Issue No.3: Whether the agreement for payment of fine of TZS 2,500,000 is enforceable by law?

Having answered the first issue in the affirmative, we are therefore of the settled view that the Complainant must have occasioned a certain loss of revenue to the Respondent which the latter claimed to be at the sum of TZS 2,500,000.00. We have considered exhibit C1 which is an agreement for payment of "fine" for bypass between the Complainant and the Respondent for the total amount of TZS 2,500,000. No legal provision was cited as the basis for the computation in exhibit C1 by the Respondent nor was any witness procured to testify on how the amount above was arrived at. To satisfy ourselves as to the correctness of the amount, we considered the provisions of the Water supply (Quality of Service) Rules GN. 176 of 2016 as shown below:

Rule 21.-(1) A licensee shall be allowed to prepare supplementary bills where:

- (a) (N/A);*
- (b) (N/A);*
- (c) a customer is found stealing water.*

(2) Notwithstanding the provisions of sub-rule (1) a supplementary bill to be prepared by a licensee pursuant to sub-rule (1) shall not exceed a period of three months counted from the date of occurrence of any of the circumstances mentioned in sub-rule (1).

From the cited Rule it is clear that the licensee is allowed to issue a supplementary bill where a customer is found stealing water. The provision goes further to provide under sub-rule (2) that the supplementary bill so prepared pursuant to sub-rule (1) (c) shall not exceed the period of three months. However, the Respondent did not provide any details on the Complainant's monthly consumption. Therefore, it is our considered view that the supplementary bill raised by the Respondent is illegal and thus we have recomputed the supplementary bill which the Complainant ought to pay and came to the sum of TZS 213,289.00. This figure comprises of an average of the three months consumption prior to and three months after the possible bypass plus TZS 20,000 being reconnection fee.

3.4 Issue No.4: What reliefs or remedies are the parties entitled to, if any?


The Complainant prays for orders to compel the Respondent to restore water supply services, refund the Complainant TZS 700,000 with interest, pay damages for unlawful disconnection and loss suffered as well as costs of the case. The Respondent on the other hand prays that the complaint be dismissed for lack of merit and that the Complainant be ordered to pay TZS 1,800,000 as remainder of the fine for meter bypass.

Based on the foregoing we therefore hold that this complaint is partly allowed as follows:

- (a) the re-calculated supplementary bill that the Complainant ought to have paid is TZS 213,289.00;
- (b) the Respondent should immediately restore water supply services to the Complainant's premises;

- (c) the Respondent should change the Complainant's customer category based on the nature of use of water and therefore bill him accordingly;
- (d) the Respondent should refund the Complainant TZS 486,711 as the balance for the already paid TZS 700,000; and
- (e) each party should bear its own costs in pursuing this complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dodoma this 27th day of February, 2020.


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NZINYANGWA E. MCHANY
DIRECTOR GENERAL

