THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

(EWURA

COMPLAINT NUMBER GA.71/472/124

RAFFIA BAGS LIMITED .....COMPLAINANT

VERSUS

DAR ES SALAAM WATER AND SEWERAGE AUTHRORITY.....RESPONDENT

AWARD

(Made by the Board of Directors of EWURA at its 143rd Ordinary Meeting held at Dodoma on the23rd day of August, 2019)

1.0 Background Information

On 1st June, 2017, Raffia Bags Limited of Ubungo Spinning Mills, Ubungo Maziwa Area, in Dar es Salaam City ("the Complainant") lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") against the Dar es Salaam Water Supply and Sewerage ("DAWASA") ("the Respondent"). The Complainant is complaining against the allegedly unjustified supplementary bill of TZS 177, 281, 471.90 issued by the Respondent.

The Complainant states that on 19th May, 2017 the Respondent disconnected water supply services at the Complainant's premises without notice. The

Complainant further alleges that subsequent to the termination of water supply services, the Respondent issued a supplementary water bill of TZS 177, 281, 471.90 accompanied with a payment plan of monthly installments of TZS 14, 773, 455.90 payable for eight months from April, 2017. The Complainant explains that upon inquiry into the validity of the supplementary bill they were informed that the bill was issued as a result of wrongful previous readings of the meter which produced incorrect bills. The Complainant disputes the Respondent's new method of reading their water meter which adds one digit to make it five digits instead of four. The Complainant claims further that the new method is unacceptable and cannot be brought up at this time to cover previous bills which were prepared by the Respondent itself and paid accordingly. The Complainant therefore filed this complaint seeking orders of the Authority to compel the Respondent to restore water supply services, issue bills based on the four digit readings of the meter, pay compensation for the loss of business and costs of the complaint.

Upon receipt of the complaint, the Authority ordered the Respondent to submit their defense to the complaint within twenty-one (21) days as required by the Energy and Water Utilities Regulatory Authority (Consumer Complaints Handling Procedures), Rules, G.N. Number 10/2013. On 5th July, 2017 the Respondent filed its defence stating that the Complainant's meter reading has a *multiple of 10* factor which means the recorded readings must be multiplied by ten to get the actual reading before a bill is computed. The Respondent further clarified that the bills issued to the Complainant did not take into account the 10* factor. The anomaly was an error on part of the Respondent but the same was subsequently corrected and a supplementary bill was issued accordingly.

The Respondent further explained that prior to issuance of the supplementary bill they held several meetings with the Complainant's Management in May,

2017 in order to explain the matter but no compromise was reached and therefore the Respondent decided to terminate provision of water supply services to the Complainant.

A mediation meeting involving both parties was held on 24th July, 2017 at EWURA Offices in Dar es Salaam but no settlement was reached hence the matter was referred to the Division of the Authority for hearing.

2.0 Hearing Stage:

During hearing which took place between April, 2018 and February, 2019 both parties appeared. The Complainant was represented by Mr. Thomas E. Rwebangira, learned Advocate whereas the Respondent was represented by Ms Neema N. Mugassa who took over from Mr. Omari Idd Kipingu, both legal officers of the Respondent. The following issues were framed for determination:

2.1 *whether the Respondent's proposed meter reading methodology is proper;*

2.2 *whether the supplementary bill of TZS 177, 281, 471.90 issued by the Respondent is lawful; and*

2.3 *what remedies, if any, are the parties entitled to?*

During hearing the Complainant called Mr. Mshamu Shaban Ngakopeya, the Administrative Officer of the Complainant as the only witness ("CW"); whereas the Respondent called Mr. Justine John Mfuli the Respondent's Commercial Officer for Magomeni Region as the only defence witness ("RW"). The Complainant's side tendered water usage bill for April, 2017 together with the payment receipt which were collectively admitted as exhibit **"C1"**. CW also tendered the notice for disconnection of water supply services

which was admitted as exhibit **"C2"**, the supplementary bill issued in April, 2017 which was admitted as exhibit **"C3"**, customer registration cards admitted as **"C4 (A)"** for April, 2016 to March, 2017 and **"C4 (B)"** from April, 2017 onwards, the proposed payment plan admitted as exhibit **"C5"** and water usage bills for June and August, 2017 collectively admitted as exhibit **"C6"**. On the other hand the Respondent did not tender any physical or documentary evidence. However, at the end of the hearing it was noted that, in order for the Authority to reach a just decision further information should be produced. In that regard and in terms of Section 18 of the EWURA Act Cap.414, and Rule 16 (3), (4) and (5) of the EWURA (Consumer Complaints Handling Procedure) Rules, GN. No. 10/2013, RW was ordered to produce documentary information regarding the Complainant's account from the date the Complainant was connected to water supply services. In that respect the Respondent submitted after the hearing an accounts statement, covering the period from April, 2006 to July, 2017, a revised supplementary bill dated 2nd August, 2017 of the sum of TZS 130,793,154.70 and meter test results form. The documentary evidence produced are marked (**A1**, **A2** and **A3**) respectively for ease of reference. These documents were served on the other party to afford them an opportunity to challenge them in their final written submission. At the end of the hearing the Complainant's counsel filed final written submissions for which we are grateful.

3.0 The Decision:

In arriving at our decision, we have considered the applicable laws which include the EWURA Act, Cap. 414, the DAWASA Act, Cap. 273 now repealed and replaced by the Water Supply and Sanitation Act, 2019, the DAWASCO Customer Service Charter 4th Edition, 2017, 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 Whether the meter reading methodology proposed by the Respondent is proper

The root of this dispute is the change of meter reading methodology by the Respondent. The Complainant's witness (CW) testified that in April, 2017 they were issued with the supplementary bill of TZS 177, 281, 471.90 (exhibit C3) together with the payment plan for eight months (exhibit C5). The issuance of the supplementary bill was followed by the termination of water supply services to the Complainant by the Respondent in May, 2017. However, CW states that the said bill (i.e. April, 2017 bill) had already been paid as per exhibit C1 which includes a payment receipt of TZS 905,000.00 dated 17th May, 2017. CW therefore claims that it was wrong for the Respondent to disconnect water supply on the basis of unpaid previous month bill when in fact the bill had already been paid. CW's testimony is summarized in the Complainant's counsel's written submission which states that water supply was disconnected prior to issuing of notice and after the alleged April, 2017 bill had already been paid.

We have scrutinized the testimony of CW with regard to unlawful termination of service by the Respondent. The CW stated that on 24th April, 2017 they were served with the supplementary bill of TZS 177, 281,471.90 together with the payment plan of TZS 14,773,455.90 per month. CW further states that subsequent to that the Complainant was served with yet another bill for the month of April, 2017 at the tune of TZS 904,055.35 which was served on 15th May, 2017. CW further states that the said April bill was paid just two days after it was served that is on 17th May, 2017. CW concludes that despite paying the bill for April, 2017 the Respondent still terminated water supply services

without notice on 19th May, 2017 two days from when the payment was made. We have observed that according to exhibit C1, payment in respect of the April 2017 bill was made on 17th May, 2017. However, at the time of paying the April, 2017 bill the Complainant had not responded to the supplementary bill served on them on 24th April, 2017. CW's testimony on this issue either lacks credibility or is based on confusion between the April, 2017 monthly bill and the supplementary bill issued in April, 2017. It is our considered view that water supply service was terminated in May, 2017 following the failure by the Complainant to pay or agree to pay the supplementary bill raised by the Respondent and served on the Complainant in April, 2017 and not the monthly bill of April, 2017. The Complainant gave the Respondent no choice but to terminate the service upon refusal to pay the supplementary bill. Therefore the Complainant's claim that service was terminated unlawfully for failure to serve notice is of no merit since the termination was not in respect of the April, 2017 bill which had already been paid but in respect of the supplementary bill which the Complainant refused to pay.

Further to that CW states that the Complainant paid their bills as and when they were issued by the Respondent. CW further testifies that, if there were any error regarding billing the Complainant should neither be blamed nor be held responsible for it. Likewise the Complainant's counsel submitted that his client is not responsible for the negligence leading to under billing and that under the doctrine of estoppel the Respondent is precluded from denying the correctness of the previous bills because that is what the Respondent made the Complainant to believe as the correct bill. The Complainant's counsel concluded by stating that, if the new reading method is declared correct then it should commence from when the anomaly was discovered that is April, 2017.

On the other side the Respondent's witness (RW) testifies that, in April, 2017 they visited the Complainant as a matter of routine inspection to large customers. RW testified that it was during this visit that they discovered that, something was wrong with the reading of the Complainant's meter. RW testifies that, the Complainant uses a 6 inches meter which according to the manufacturer's user guide the said meter has a factor ten (10) reading. RW states further that all meters of size 6'' and above have a factor ten which means any reading of the meter must be multiplied by ten to get the actual reading. RW explains that the Complainant's meter was installed in August, 2012 and since then the Complainant's bills were being prepared without taking into account the factor ten leading and hence issuance of incorrect bills.

RW further testifies to the effect that, having noted and corrected the anomaly they issued the supplementary bill of TZS 177, 281, 471.90 and subsequently disconnected water supply services to the Complainant as the negotiations to settle the said bill between the parties had failed. Although RW acknowledges lack of competency of the meter reader which led to submission of wrong meter readings, he insisted that, such failure does not hide the fact that the Complainant, as a customer, consumed the service for which they must pay. It is in that same respect the witness claims that another large customer called Chibuku Industry has agreed to pay the supplementary bill in similar circumstances as those of the Complainant.

The question of meter reading methodology was first raised in another complaint before us that was between ***Kamati ya Maji Mji Mpya wa Mabwepande against DAWASCO*** in complaint number GA.71/472/34 of 2016. In that complaint the Complainant was protesting against the debt amounting to TZS 500 million which was a result of reviewed meter reading methodology. In that complaint the Respondent testified and submitted the

manufacturer's user manual which showed that indeed the meter had a factor ten. The said meter was of the same size and brand as the one in question. The only thing distinguishing the conclusion between these two complaints is that in the Mabwepande complaint the meter had malfunctioned thus producing incorrect reading whereas in this complaint the meter was functioning properly.

We have further considered the Complainant's bills prior to change of meter that is before August, 2012 as per **"A1"** the Complainant's statement of account. The Complainant's statement of account shows that in May and June, 2009 their water bill stood at TZS 9.9 million per month and from July to November, 2009 the bill was at the average peak of TZS 10 million per month. It is therefore not suprising that the Complainant's monthly bill could go as high as 10 million shillings. After the change of the meter from the previous to the meter in question the Complainant's monthly bills dropped to the average of TZS 1 million and below. No explanation was offered by the Complainant in their evidence or final submission with regard to this sharp drop in the bill. The sharp drop in water consumption by the Complainant, who is a commercial customer, and without a plausible explanation for such drop; compel us to attribute it to no other cause than the wrongful reading of the new meter. Additionally and based on the comparison between the consumption from two different meters used by the Complainant from 2005 to 2017 as shown in the Complainant's statement of account A1, the technical evidence and the decision on a similar complaint; we find and hold that the Respondent's meter reading methodology which allows a factor of ten is correct.

3.2 Whether the supplementary bill of TZS 177, 281, 471.90 issued by the Respondent is lawful?

This issue relates to the lawfulness or otherwise validity of the supplementary bill issued by the Respondent to the Complainant in April, 2017 and which is the subject of this complaint. CW as well as the Complainant's counsel repeatedly referred to the stated amount as the April, 2017 bill. We disagree with that assertion in the sense that exhibit C1 is distinguishable from exhibit C3. Exhibit C1 is the bill for the month of April, 2017 whereas exhibit C3 is the supplementary bill issued in April, 2017 covering the period between August, 2012 and March, 2017 both months inclusive. The supplementary bill issued by the Respondent was later on reviewed and thereby reduced to TZS 130,793,154.70 as per exhibit **A2**.

The supplementary bill is issued to recover revenue unclaimed either due to error in the preparation of bills, malfunctioning of meter or tampering with infrastructure leading to under billing or loss of revenue. In this matter there is no dispute on whether the Respondent is allowed to raise a supplementary bill but whether the supplementary bill prepared and issued by the Respondent is in compliance with the law. Since the bill does not relate to meter accuracy but to the error in computation; and based on our finding that the method of computation of the supplementary bill is correct, then the bill raised is in that respect correct as well. The Complainant's counsel, in his final submissions, raised two arguments, one being of the doctrine of estoppel and contributory negligence. The Complainant's counsel argues that, the Respondent should not be allowed to deny the correctness of the bills they issued upon which the Complainant acted and paid in full. The Complainant's counsel further submitted that RW admitted that failure to issue correct bills was not the fault of the Complainant but rather the Respondent's. It is very unfortunate that the Respondent who is supposedly equipped with sufficient technical staff committed such an error and allowed the same to go on for as long as five years unnoticed. It is our view that the duty to issue monthly bills carries with it an implied duty to ensure bills are correct and timely issued.

The Complainant's counsel further submitted that it would be highly prejudicial to the customer such as the Complainant who is a commercial entity that arranges its affairs in each financial year on reliance on the Respondent's bills only to be required to pay an accumulated bill of this magnitude. On the other hand RW admitted that there was laxity on the party of the Respondent in failing to detect the error at the earliest possible time. However, RW held that the customer enjoyed the advantage and increased her profits for paying less. It is therefore just and equitable for them to pay even though a considerable period has lapsed.

We have considered the arguments by both parties, and we would wish to first address the point that in August, 2012 when the old meter was replaced with the meter which is a subject of this dispute the Complainant's statement recorded a sharp drop in the Complainant's monthly water bill. The record has shown that since then the Complainant's monthly bill sharply dropped from TZS 5,855,726.05 in July, 2012 to TZS 502,930 in August, 2012. This is a decline in the Complainant's monthly bill by 91.4%. We have noted that the DAWASA Act Cap.273 being the only applicable legislation to the Respondent by then, does not have a provision which addresses the issue at hand. However, despite the gap in the law and in line with the best practices, we have considered other sources such as the *Water Supply and Sanitation (Quality of Service) Rules GN. 176/2016 and the Electricity (Supply Service) Rules GN.387/2019*. Although these Rules do not apply to the Respondent, they nevertheless address the issue at end and offer the best practice for similar issues in the utility industry. We have also considered the Respondent's Customer Service Charter which was applicable to the Complainant prior to the dissolution of DAWASCO and taken over by the Respondent. The said Customer Service Charter to begin with provides under paragraph **4.0.5** as follows:

"Customers will be billed on the metered consumptions except in circumstances where the meter is damaged, OR where the readings are questionable, OR have discrepancies, OR in a situation where meter readings have not been taken for a specified period of time".

From the paragraph above, it can be seen that the Respondent recognizes that there are situations where a supplementary bill can be issued and such circumstances include where the readings are questionable or have discrepancies which fits in the case at hand. A similar provision is available in the Charter under paragraph **11.2** which provides as below:

"Further to the fine above, the customer must pay for estimated illegal water used during the determined period of consumption.....The period to be charged will be a minimum of 36 months".

The difference between the two provisions is that the latter goes further and sets a recovery period for cases involving water theft or tampering with infrastructure which is 36 months whereas the former does not.

We further considered rule 21 of the *Water Supply and Sanitation (Quality of Service) Rules GN. 176/2016* which provides as quoted here under:

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

(a) a report from meter inspection and testing has indicated that the meter has malfunctioned;

(b) the results in rule 18 has indicated that there were some errors in preparation of bills or the meter has malfunctioned and a customer has agreed in writing on such errors or malfunctioning; and

(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)".

Although the above water Rules do not apply to DAWASA designated area as mentioned earlier it is sets the best practice in other water authorities on how water customers are treated elsewhere within the country. It is also hereby emphasized that one of the conditions of the Respondent' licence is to comply with the industry's best practices. In further consideration we came across the provisions of the Electricity (Supply Service) Rules GN.387/2019 particularly Rule 50 which provides:

50(1) *"A licensee shall be allowed to prepare supplementary bills where:*
(a) The results in rule 48 have indicated that there were some errors in the preparation of bills ..... and the customer has agreed on such errors....."

(2) *"Notwithstanding sub-rule(1) the supplementary bill to be prepared by a licensee shall not exceed a period 12 months counted from the date of last inspection".*

We have carefully considered the two examples above and came to the view that water supply customers who are issued with supplementary bills following errors in preparation of their bills should not be treated differently across the country. In that regard, we consider the period of 36 months under the Respondent's Charter as inapplicable in this case since this was not a case of water theft or tampering with infrastructure. We also consider the period of

12 months used for electricity customers as too high compared to the period of 3 months used generally to similar customers in the water sector. In the upshot we set the recovery period for DAWASA customers generally and for the Complainant in particular to be three months. The period of three month is a reasonable period which ensures DAWASA customers are not treated worse than similar customers of other places outside DAWASA designated area. This is the best practice which promotes equality before the law.

Based on the foregoing we therefore order that the supplementary bill against the Complainant be re-computed based on the recovery period of three months counted backward from April, 2017 when the error in the preparation of bills was discovered.

3.3 What remedy, if any, are the parties entitled to?

The Complainant prayed for orders to compel the Respondent to restore water supply services, to be allowed to pay her bills based on the four digit readings and to be paid damages, costs and compensation for losses. In his final written submission, the Complainant's Counsel made additional prayers for compensation for TZS 15,000,000.00 as the cost incurred in drilling a bore hole for alternative water supply for the period when water supply was disconnected, loss of business and damages. The Respondent on the other hand prayed that the Complaint be dismissed and the Complainant be ordered to pay the supplementary bill. When the matter came for hearing, we were informed that water supply services were restored in August, 2017, thus the prayer for restoration of service is overtaken by events. As for the prayer for the cost of TZS 15 million incurred to drill a bore hole, the Complainant did not present proof thereof. Besides, the Respondent's termination of service has not been faulted. Since the complaint is only partly allowed to the extent that the supplementary bill is adjusted for contributory negligence, the

Respondent's prayers for loss of business and damages are denied. We hereby reiterate our findings on the first issue that the meter readings ought and should be multiplied by ten before computation of the Complainant's future bills can be done.

In the final verdict we hereby partly allow the Complaint and order the Respondent to issue a supplementary bill based on a recovery period which does not exceed three months counted backward from April, 2017 when the error in computation of the Complainant's bills was discovered. Each party shall bear its own costs of the complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 23rd day of August, 2019.

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NZINYANGWA E. MCHANY
DIRECTOR GENERAL