



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

COMPLAINT NUMBER: GA.71/472/189

SADAH HUSEN NZOWA.....COMPLAINANT

VERSUS

**MBEYA URBAN WATER SUPPLY AND
SANITATION AUTHORITYRESPONDENT**

AWARD

*(Made by the Board of Directors of EWURA at its 144th Ordinary Meeting held at
Arusha on the 28th day of September 2019)*

1.0 Background Information

On 28th December, 2018, Ms Sadah Husen Nzowa of Plot No. 1720, Block "M" New Forest in Mbeya City ("the Complainant") lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") against the Mbeya Urban Water Supply and Sanitation Authority ("the Respondent"). The Complainant is complaining against the alleged failure by the Respondent in reconnecting water supply services to her premises located at Plot No. 1720, Block "M" at New Forest in Mbeya City ("the premises") despite paying for the reconnection fee. The Complainant claims that sometimes in May 2016, she processed the application for new water supply connection to the premises and the Respondent considered the said application and she was issued with a meter number 0403977 with account number 291995 in the customer category of Domestic Medium.

The Complainant claims that after being connected with the services from the Respondent she was using the said services and paying bills until sometimes in April 2018 when the service was disconnected due to accumulated unpaid bills; which she reckoned the same to have been unjustifiably raised. The Complainant claims that after the said disconnection she made follow ups with the Respondent so that she can be reconnected back with the services only to be given two conditions which she was required to fulfil first. The said conditions were:

- (a) payment of the outstanding balance of TZS 1,530,000; and
- (b) payment of the reconnection fee of TZS 12,000.

The Complainant claims that she fulfilled the conditions given the Respondent above by paying the outstanding balance and the reconnection fee on 30th May 2018 and on the following day the Respondent promised to reconnect her with water supply services without delay. The Complainant further claims that despite the promise by the Respondent and repeated reminders from her, water supply services was never restored to the premises and thus exposing her to unnecessary costs, inconveniences and disturbances. The Complainant prays to the Authority to:

- (a) order the Respondent to pay her the specific damages of TZS 52,000,000 being the costs incurred for the supply of water by water tankers and costs for drilling a borehole and constructing a well for alternative water service in the premises;
- (b) order the Respondent to pay her general damages of TZS 100,000,000 or as shall be assessed by the Authority;
- (c) order the Respondent to pay her the costs of this complaint; and
- (d) issue any relief that it may deem just and equitable to be issued.

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, on 31st January 2019, submitted their reply to the complaint as

required. The Respondent acknowledges that the Complainant is their customer having been connected to the water supply services since 31st May 2016. The Respondent claims that the Complainant was disconnected from the water supply services on 28th March 2018 due to accumulated unpaid bills amounting to TZS 1,530,000.

The Respondent further claims that after they had disconnected the Complainant from the services, they visited the premises for the purpose of checking on the security of their infrastructures; and discovered that the Complainant has been fraudulently enjoying water supply services by reconnecting the services and removing the meter. The Respondent claims that after they had discovered the said illegalities, they invited the Complainant to their office with a view to finding the solution on the matter. At the Respondent's office the Complainant was asked to choose either appearing before the Respondent's Special Illegal Connection Committee ("the Committee") or be prosecuted in the courts of law; and the Complainant choose to appear before the Committee.

The Respondent claims that during the meeting with the Respondents Illegal Connection Committee, the Complainant's Manager know as Mr. Ramadhani admitted to the commission of the offence and said that they were ready for the punishment. At the end of the meeting, the Complainant was told to pay TZS 2,926,833.40. The Respondent claims that four days after being told to pay the amount stated above, the Complainant's advocate came to their office and state that they are not going to pay the said amount. The Respondent concluded by praying that the Authority dismiss the complaint and further order the Complainant pay TZS 254,306.80 being the outstanding debt. The Respondent also prays for payment of the costs of the complaint.

2.0 Hearing Stage:

During hearing which took place at EWURA Offices of the Southern Highlands Zone in Mbeya City from 19th of August, 2019 to 21st August 2019, the Complainant was represented by Ms Jenifa Joely Silomba and Livino Ngalimtumba Haule, learned advocates. The Respondent was represented by Ms Sofia Sombe and Ms

Diana Shumbusho, Legal Officers. The following issues were framed for determination:

- 1) whether there was illegal reconnection;*
- 2) whether the action by the Respondent of not reconnecting service was justifiable;*
- 3) whether the Complainant suffered damages as a result of the failure by the Respondent to reconnect water services; and*
- 4) what remedies, if any, are the parties entitled to, if any?*

During hearing the Complainant's side called a total of three witnesses who are the Complainant herself who testified as the first witness (CW1), Mr. Rmadhani Mohamed Shilemile, the Accountant of SS Supermarkets and Milo Group Limited as the second witness (CW2) and Mr. Emanuel Njavike Wella, the Driver of a Water Bowser as the third witness (CW3). The Respondent on the other hand called two witnesses namely Ms Glory Kayombo, the Respondent's Meter Reader and Mr. Meshack Nyuwa, the Respondent's Water Quality Technician. At the end of the hearing both parties 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 repealed Water Supply and Sanitation Act Cap. 272, the Water Supply and Sanitation (Quality of Service) Rules, GN No. 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 Whether there was illegal connection

The testimony of CW1 was very brief on the matter and she simply narrated what is contained in the complaint form. To put it simple, CW1 testified to the effect that despite paying for the alleged outstanding bill and the reconnection fee

amounting to TZS 1,530,000 and TZS 12,000 respectively, she was never reconnected to the service. CW1 admitted to have been summoned by the Respondent to appear before the Committee but insisted that she never participated in water theft as alleged by the Respondent. CW1 concluded by expressing how she suffered as a result of the disconnection of water supply by the Respondent. CW1 testified to the effect that as a result of water disconnection, she was forced to seek for alternative water source by hiring a water bowser and drilling a borehole.

CW2, who is the accountant to SS Supermarket which the Complainant is the co-owner, narrated on what has been stated by CW1 but went further by explaining on prior events to the disconnection. CW2 testified to the effect that sometimes in August 2017, the Complainant was served with a water bill which was questionable when comparing it with the actual consumption. CW2 further testified that after receiving such bill they thought it was just a normal error on part of the Respondent; but in October 2017, they received another bill with the amount shot to TZS 544,000. CW2 testified to the effect that, after receiving the said bill they became suspicious and decided to inquire from the Respondent. CW2 tendered the Complainant's Comprehensive Statement which was admitted as exhibit "C1". In order to show proof of their concern, CW2 read through exhibit "C1" where the bill for June 2017 was TZS 13,370, July 2017 was TZS 41,662, August 2017 was TZS 109,574, September 2017 was TZS 9039.50 and in October 2017 was TZS 544,379. CW2 testified that even after reporting the matter to the Respondent and the Respondent's promise to come and check on what causes such a big variation in the billed amount, none came from the Respondent. CW2 testified to the effect that, the disputed bills were never resolved until when water supply service was disconnected by the Respondent sometimes in March 2018 and the Complainant was ordered to pay TZS 1,530,000 and TZS 12,000 as the outstanding debt and the reconnection fee. CW2 testified that he paid the amount demanded above on 31st May 2018 and he tendered the deposit slips which were admitted collectively as exhibit "C2". CW2 testified to the effect that despite the payment made, water supply service was never restored to the

premises and thus they were compelled to find for alternative water sources for the Complainant.

CW2 testified to the effect that as alternative source they drilled a borehole at the costs of TZS 38,000,000 and before the borehole was in place and use, they used to pay TZS 500,000 per day for the period from 31st May 2018 to 1st August 2018, to meet the costs for water supply through water bowzers. An EFD receipt dated 10th August 2018 worth TZS 5 million was tendered by CW2 and admitted as exhibit "C3". CW2 testified further that after payment of the amount demanded by the Respondent, service was never restored and instead the Respondent raised new charges against the Respondent for water theft. CW2 testified to the effect that, after the allegations of water theft were made, the Complainant decided to issue a demand notice to the Respondent asking for some reliefs therein and such notice was tendered by CW2 and admitted as exhibit "C4".

When cross examined by the Respondent's Legal Officer, CW2 testified to the effect that after they had paid the demanded amount on 31st May 2018, the Complainant was summoned to appear before the Committee. CW2 testified that after receipt of the said summons he attended on the Complainant's behalf and he was told that, the Complainant is engaging in water theft and thus cannot be reconnected with water supply.

CW3 on his part narrated on his role in supplying water to the Complainant for the period between May and August 2018. CW3 testified that during the said period he was driving a water bowser with registration number T938 BWJ which belongs to HSS Engineering Ltd. CW3 testified to the effect that, he used to deliver water to the Complainant, as and when needed and he cannot remember how many times but it was quiet frequent. CW3 testified that he used to fetch water from Soweto Block "T" Area from the house of John Johnson Sama who happened to be the partner of the Complainant at SS Supermarkets. CW3 testified that the costs of water stood at TZS 120,000 per trip and the cost for hiring a water bowser stood at TZS 250,000 per trip. Other costs were TZS 50,000 as driver's wage and TZS 80,000 for fuel. During cross examination by the Respondent's

Legal Officer, CW3 stated that the capacity of the water bowser was 4000 litres and that of a pick-up water bowser was 1000 litres. When asked on whether he was issued with a receipt upon fetching water from Mr. Sama, CW3 replied that the receipts were issued but he did not have them at the moment. When asked on why he opted to go to fetch water from Mr. Sama and not somewhere else, CW3 replied that he was instructed to go there.

RW1 testifies to the effect that she is an employee of the Respondent responsible for meter reading. RW1 testifies further that she is in charge of 180 customers in Forest Mpya and Iyela Area in Mbeya City and the Complainant is one of the customers in the area under her supervision. RW1 testifies that the Complainant was once found with an outstanding bill and as a result water supply service was disconnected from the premises. RW1 testifies that after disconnection, the Complainant paid the outstanding bill and service was restored. RW1 further testifies that at the second time the outstanding bill was growing much bigger and having found that the Complainant had tampered with the Respondent's infrastructures, water supply services were disconnected again on 21st March 2018. When cross examined by the Complainant's counsel, RW1 testifies to the effect that she was not at the scene when the Complainant was found to have tampered with the Respondent's infrastructures. RW said she was only told about it by Neema Santoni and Meshark Nyuwa, who are also the Respondent's employees. When further cross examined, RW1 said that during an inspection by the Respondent's employees, the Complainant was found to have removed the meter from its normal stand point, so that she was able to get water unmetered. When asked by the Complainant's counsel on why service was never restored despite the fact that the Complainant had paid the outstanding bills plus reconnection fee, RW1 said that service was never restored because the Complainant was found stealing water. When asked on whether the Respondent has issued a supplementary bill to the Complainant after discovering that she was stealing water, RW1 replied that she does not know. On how did they establish that the Complainant was stealing water, RW1 stated that from the December 2017 readings, there was a sharp drop from 191 units in previous month readings to 66 units. When further asked how the Complainant can be stealing water, while

her meter readings from June 2017 to October 2017 were on an upward instead of a downward trend, RW1 replied that she does not know.

RW2 testified to the effect that on 21st March 2018, the Respondent disconnected water supply from the premises dues to unpaid bills amounting to TZS 1,100,000. RW2 testified further that water supply service was disconnected by putting a stopper and a seal and they left the notification, and the meter was also left. RW2 testifies further that, sometimes in April 2018, during routine inspection at the premises they found the meter not in its normal stand point as it was kept aside. RW2 testifies that upon finding the changes in the location of the meter, they interrogated those who were at the premises, who said they do not know who removed the meter and may be it is the technician who used to go there. RW2 further testified that upon finding the evidence of meter tampering at the premises, they summoned the Complainant to appear before the Committee but the Complainant never appeared and instead CW2 went to the Respondent's office to make follow ups on reconnection. RW2 further testifies that any person found with illegal connection is given two options to choose one, either to appear before the Committee and settle the matter or be prosecuted in the courts of law.

When asked by the Complainant's counsel on whether they involved local authorities during the inspection at the premises, RW2 replied that they did not involve them. When further asked by the Complainant's counsel on whether the Complainant was charged with criminal case after she had failed to appear before the Committee, RW2 replied that the Complainant was never charged.

When asked if there was water theft through bypassing and as per exhibit "C1" was the billed amount supposed to decrease or increase, RW2 replied that the billed amount was supposed to decrease.

We have considered the evidence by both sides on this issue and the closing submissions made by both parties and it suffices to say that we do not see any evidence of illegal reconnection. It is a cardinal principle in law that he who alleges must prove. In this matter, the Respondent is alleging that the Complainant tampered with its infrastructures by removing the meter from its

stand point with a view to stealing water. However, apart from contradictory testimonies of RW1 and RW2, the Respondent submitted no evidence to prove such allegations. We are saying contradictory, because RW1 stated in her testimony that during the day the Complainant was found to have tampered with the meter, she was not at the scene but she was told what happened by RW2. This is the opposite of what RW2 stated during hearing where he said RW1 was at the scene. This contradiction makes us to believe something is being hidden here or the the credibility of the evidence given by both RW1 and RW2 is questionable.

Furthermore, tampering with water infrastructure is a criminal offence punishable under section 47 (1) of the now repealed Water Supply and Sanitation Act. One may wonder, if indeed the Complainant was found to have tampered with the Respondent's meter and upon being summoned to appear before the Committee she decline, why she was not taken to court? In this matter we are inclined to agree with the Complainants counsel in her closing submission where she said that the allegations of water theft are just afterthoughts on part of the Respondent after failing to reconnect the Complainant when she paid the outstanding bill plus the reconnection fee on 30th May 2018.

3.2 Whether the failure to reconnect water supply services by the Respondent after being paid was justifiable

The decision to this issue depends on what we have decided in the first issue. It is not in dispute that water supply services at the premises was disconnected by the Respondent on 21st March 2018 due to accumulated unpaid bills. It is equally not disputed that on 30th May 2018, the Complainant paid TZS 1,530,000 plus TZS 12,000 being the outstanding bills and the reconnection fee, respectively. As per the testimony of RW1 water supply service was never restored to the premises because the Complainant was found stealing water. The issue before us now is to establish whether the moves by the Respondent in not reconnecting the Complainant with the water supply is justifiable. From the outset it is our considered view that the failure or denial by the Respondent to reconnect the Complainant with water supply services after she had paid for it on 30th May 2018

is not justifiable. This is in line with our holding in the first issue where we have found that there was no illegal reconnection and hence, water theft.

Furthermore, if indeed there was water theft, we have asked ourselves when did it start? As per the testimony of RW2, water theft was discovered after a routine inspection at the premises sometimes in April 2018 where it was revealed that the Complainant has removed the meter. This is in contrast with the testimony of RW1, who testified to the effect that they discovered water theft after analyzing the Complainant's meter readings from December 2017, where they observed a sharp drop from 191 units in previous month readings to 66 units. However, when asked on how the Complainant can be stealing water, while her meter readings from June 2017 to October 2017 were on an upward instead of a downward trend, RW1 replied that she does not know. Apart from the contradiction between RW1 and RW2, we do not find substance in the testimony of RW2 either. If you read exhibit "C1" which is the Customer Comprehensive Statement, one thing is clear from June 2017 to April 2018 there is an upward trend in consumption with the exception of September 2017 and December 2017. If the Complainant was stealing water, and without any change in consumption pattern, one would expect the billed amount to go down.

In the final analysis and based on our reasoning above, our decision in the second issue is to the effect that the failure to reconnect water supply services by the Respondent after the Complainant had paid for reconnection is unjustifiable.

3.3 Whether the Complainant is entitled to damages

As per our decision in the first and second issue and just as a day follows a night, it is our considered opinion that the Complainant is entitled to damages. Due to the failure or refusal by the Respondent to reconnect water supply services to the premises, the Complainant was subjected to unnecessary hardship, inconveniences and disturbances. The fundamental principle by which the courts are guided in awarding damages is "*restitutio in integrum*", which means that the law will endeavor, so far as money can do, to place the injured person in the same situation as before. In this complaint the Complainant is praying for both

special as well as general damages. Special damages must be proved specifically and strictly. **Lord Macnaghten in Bolag v Hutchison [1950] A.C. 515 at page 525**, laid down what we accept as the correct statement of the law that special damages are:

"... such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specially and proved strictly."

The same was stressed by the Court of Appeal of Tanzania in the case of **Zuberi Augustino v Anicet Mugabe, [1992] TLR 137**, at page 139 where the court had this to say:

"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved".

As per the testimony of CW2, the Complainant was forced to drill a borehole at the costs of TZS 38,000,000 in order to find the alternative source of water. Before the borehole was in place and use, the Complainant was paying TZS 500,000 per day for the period from 31st May 2018 to 1st August 2018 to meet the costs for water supply through water bowzers. CW3 testifies that the costs of water stood at TZS 120,000 per trip and the cost for hiring a water bowser stood at TZS 250,000 per trip. Other costs were TZS 50,000 as driver's wage and TZS 80,000 for fuel.

3.4 What remedies, if any, are the parties entitled to, if any?

In this complaint the Complainant is praying that the Authority to:

- (a) order the Respondent to pay her the specific damages of TZS 52,000,000 being the costs incurred for the supply of water by water tankers and costs for drilling a borehole and constructing a well for alternative water service in the premises;
- (b) order the Respondent to pay her general damages of TZS 100,000,000 or as shall be assessed by the Authority;
- (c) order the Respondent to pay her the costs of this complaint; and
- (d) issue any relief that it may deem just and equitable to be issued.

The Respondent on its part is praying to the Authority to dismiss the complaint and further order the Complainant to pay TZS 254,306.80 being the outstanding debt. The Respondent also prays for payment of the costs of the complaint.

As stated in issue number three, special damages must be strictly pleaded and proved. The Complainant is claiming payment of TZS 52,000,000 being the costs of drilling a borehole and procuring water from alternative sources using water bowzers. Apart from oral testimonies of CW2 and CW3, the Complainant submitted no documentary evidence to prove her claim. There were neither receipts nor contracts or any other documentary evidence to prove the expenses incurred. Even with respect to exhibit "C3" which is the receipt payable to Nyasa Drilling Company for costs incurred in drilling the borehole, the same cannot be helpful. This is due to the fact that by applying the "*restitution in integrum*" principle allowing such claim will be tantamount to double compensation, as of now, the Complainant is owning and enjoying the services of a borehole. In the final analysis we disallow the claim for payment of TZS 52,000,000 being special damages claimed by the Complainant.

With regard to the claim for TZS 100,000,000 or any such amount as the Authority may determine as general damages, it is matter of law that general damages are awarded at the discretion of the court/Authority. As per our holding in issue number three, the Complainant was subjected to some hardship, inconveniences and disturbances as a result of the failure or refusal by the Respondent to reconnect the premises with the water supply services. However, considering the nature and extent of suffering the Complainant has gone through we find the claim for TZS 100 million as general damages to be on the higher side. As per the testimonies of RW1, RW2 and RW3, the Complainant remained without water supply services from the Respondent for the period 485 days counted from 31st May 2018 to-date. As per item 5 of the Second Schedule to the Water Supply and Sanitation (Quality of Service) Rules, GN No. 176/2016, the computation of compensation payable for failure to reconnect after the settlement of the debt is TZS 30,000 plus TZS 5000 per day for all the days the consumer remained unconnected. If we apply the computation as stated above, the amount payable to

the Complainant is 485 days times TZS 5,000 plus TZS 30,000 which makes a total of TZS 2,455,000. In the final analysis and considering all the facts above, we award the Complainant TZS 2,455,000 as general damages. The Respondent is also ordered to reconnect the Complaint with water supply service with immediate effects. The Complainant is also awarded the costs of this complaint.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 28th day of September, 2019.



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NZINYANGWA E. MCHANY

DIRECTOR GENERAL