

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

**COMPLAINT NUMBER: SN.71/135/97**

**BHARYA ENGINEERING CONSTRUCTION CO. LTD.....COMPLAINANT**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY COMPANY LIMITED..... RESPONDENT**

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**AWARD**

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*(Made by the EWURA Board of Directors at its 169<sup>th</sup> Ordinary Meeting held on  
the 28<sup>th</sup> day of October, 2021)*

**1.0 Background Information:**

On 10<sup>th</sup> September, 2020, Bharya Engineering and Construction Company Limited herein BECCO a company registered under the Companies Act and having its place of business at Vingunguti Industrial Area in Dar es Salaam City ("the Complainant") lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") against the Tanzania Electric Supply Company Limited (TANESCO) ("the Respondent"). The Complainant is disputing a debt of TZS 87, 931,146.95 alleged to have emanated from electrical energy consumed by M/S Ming Yong the Complainant's ("the tenant").

The Complainant states that on 19<sup>th</sup> March 2012 they leased a Go-down building ("disputed premises") to the tenant for a provisional period of ten years with an option for extension. The Complainant states further that the lease agreement provided that the tenant will be responsible for payment of electricity and all other utilities that will be consumed by him. The Complainant further

states that while the contract subsisted the tenant made arrangement with the Respondent for supply of electricity services without consent of the landlord (BECCO). The Complainant claims that on 10<sup>th</sup> May, 2014 the tenant issued a notice to the landlord to terminate the lease contract and on 15<sup>th</sup> July, 2014 the tenant vacated the premises. The Complainant further narrates that on 19<sup>th</sup> October, 2017 the Respondent delivered a letter to the Complainant demanding, from the Complainant, payment of the sum of TZS 62,127,342.74 which included cost of electricity consumed by the tenant TZS 36, 819,115.15 and interest thereon TZS 25,308,227.27.

The Complainant disputes the aforementioned debt and claims that they are not liable to pay the debt as the Respondent transacted with the tenant without consulting them (i.e., the landlords). As there was no compromise between the parties, the Complainant filed this complaint seeking for orders of restraining the Respondent from recovering the debt from the Complainant and from disconnecting electricity supply services at the Complainant's office in a bid to recover the alleged debt. The Complainant also claims for costs of the complaint.

Upon receipt of the complaint, the Authority via summons issued on 9<sup>th</sup> October, 2020, 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 428/2020*. The Respondent filed its defence on 30<sup>th</sup> October, 2020 and admitted only that, at the tenant's request, they connected power to the premises that was used as a factory and went on to deny the rest of the Complainant's averments. Efforts to mediate the dispute did not succeed and thus, the matter was referred to the Division of the Authority for hearing.

## **2.0 Hearing Stage:**

During hearing which took place between 28<sup>th</sup> April and 9<sup>th</sup> September, 2021 both parties appeared. The Complainant was represented by Ms. Batilda

Mallya, learned advocate whereas the Respondent was represented by Ms. Eva Mchau, State Attorney. The following issues were framed for determination:

- 2.1 whether the Complainant is liable to pay the sum of TZS 87,931,146.95 as the electricity consumption debt to the Respondent; and*
- 2.2 what remedies are parties entitled to, if any?*

During hearing Ms. Violet Mbele the Manager of the Complainant Company testified as the only Complainant's witness "**CW**". On the other hand, the Respondent called two witnesses Miss Aneth Mataba an accountant who testified as the first defence witness "**RW1**", and Zacharia Mathayo Ng'okorome, District Engineer for the Respondent's Industrial District who testified as the second witness "**RW2**".

The Complainant's side tendered three exhibits, which are the tax invoice dated 25<sup>th</sup> August 2020 which was admitted as **Exhibit "C1"**, the notice to terminate the lease contract dated 10<sup>th</sup> May 2014 which was admitted as **Exhibit "C2"**, and the Tenancy Agreement between BECCO and Ming Yong Investment dated 19<sup>th</sup> March 2012 admitted as **Exhibit "C3"**. The Respondent on the other hand tendered Customer Statement which was admitted as exhibit D1. At the end of the hearing the both counsels 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 *Electricity Act Cap. 131*, the *Electricity (General) Regulations GN. 945/2020*, and the *Electricity (Supply Services) Rules GN.387/2019*. We have also considered the *Respondent's Client Service Charter R.E 2013*, and 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 Complainant is liable to pay the sum of TZS 87,931,146.95 as electricity consumption debt to the Respondent:***

The Complainant claims that they are not liable to pay the disputed debt as power was consumed by their tenant Ming Yong Investment Company Limited and not them. The said tenant is a Chinese based Company which vacated the Complainant's premises in July, 2015 and cannot be traced. The Complainant further argues that electricity supply service to the tenant was made without prior consultation or consent of the Complainant (landlord). On the other hand, the Respondent's claim is based on the argument that the Complainant was duty bound to inform them about the entry and departure of her tenant. Failure to do so the landlord bears the burden to pay for any unpaid bills.

The undisputed facts of this complaint are such that the tenant entered into a ten years lease agreement with BECCO (landlord) for lease of a go-down premises for opening a factory. The tenant applied for electricity services which was granted. The tenant vacated the premises without notice to the Respondent and thereby failing to pay her last bill of July, 2014 amounting to TZS. 37,426,864.55. the said unpaid bill accrued interest of 51,251,430.35 from 2014 to 2021.

The Complainant's witness (CW) testified to the effect that the Respondent obtained no consent from the landlord before connecting to electricity supply services to the disputed premises. During cross examination CW was shown Clause 2 of the tenancy agreement ("exhibit **C3**"), which and asked whether there was anywhere in the said agreement where the tenant is obliged to seek consent of the landlord before applying for electricity connection and she said it was not written. We have gone through the agreement ourselves and indeed we could not find anywhere a requirement that the tenant should seek consent of the landlord before connecting the premises to electricity and water supply services. We have considered the provisions of clause 2 in exhibit "C3" and satisfy ourselves that the said clause clear and unambiguous. Clause 2 of exhibit "C3" gave the tenant both consent to make arrangement for procurement of electricity and water supply services and an obligation to pay

for such services. In our view no further consent was required for the tenant to procure the said water and electricity services. Had it been the intention of the cited clause 2, then the landlord should have acted for breach of contract which they did not. Besides the landlord knew the purpose for which the premises were being rented for and that explains why clause 2 was crafted to enable the tenant to procure those services which were essential for the nature of the activities to be carried out in the premises which was a factory. The Respondent was therefore entitled to rely on clause 2 as testified by the first Respondent's witness RW1 in connecting the premises to electricity supply services.

As pointed out above, clause 2 gave the tenant a right to connect utility services and an obligation to pay for connection and consumption of such services. Throughout the contractual period, the tenant was discharging its obligation by paying for electricity services save only for the bill of July, 2014 which was the last bill. We asked ourselves why was this bill not paid? The answer is found in the evidence. Exhibit C3 states under clause 1(a) that:

*The Lessor lets unto the Tenant the said premises to hold the same for the provision of Ten years (120 months) from 01-06-2012 and ending 31-05-2022....*

The lease agreement which was submitted to the Respondent during application for connection to electricity supply services therefore was intended to last for ten years. However, for reasons only known to the tenant the said lease survived for only two years and one month (25 months). The tenant issued a notice to terminate the lease in May, 2014 as per the testimony of CW. The said notice, exhibit C2 states under paragraph 1:

*Tunaomba kusitisha mkataba wa kuendelea kutumia jengo mlilotupangisha. Kodi ya jengo tuliyolipa muda wake unaisha ifikapo tarehe 15/06/2014. Hivyo basi tunakuomba utuongeze muda wa mwezi mmoja yaani mpaka ifikapo tarehe 15/07/2014 ili tuweze kukamilisha maandalizi ya kuhama. Tatalipia gharama ya kupanga ya mwezi mmoja ambao utaongezeka.*

The said notice was not served to the Respondent and therefore the only information in the hands of the Respondent was the lease agreement meant to last for ten years. CW was asked during cross examination whether they informed the Respondent about the intended departure of the tenant and she said they did not. It is obvious that the Respondent could not have known about the tenant's plans to terminate the lease and vacate the premises unless they were informed by either the tenant herself or the landlord (Complainant). Since neither the landlord nor the tenant informed the Respondent about the tenant's intended termination of the lease and vacation of the premises; the Respondent therefore, was in the dark and unable to ensure the said tenant pays the last bill before vacating the premises.

The question to ask ourselves is whether the landlord was duty bound to inform the Respondent about her tenant's intended departure? We could not find any provision in either the law or the client service charter of the Respondent which imposes such an obligation on the landlord. However, we are of the view that clause 2 of the lease agreement in this case intended to protect some interests of the landlord. The obligation to pay for utility services imposed on the tenant meant that the tenant should not leave behind utility debts. Because if a tenant vacates the premises and leaves behind some utility debts, the landlord will be liable to pay and the Respondent (Service Provider) will be entitled to disconnect the service until such a debt is paid. Payment of bills by the tenant is therefore in the best interest of the landlord and the opposite of it is detrimental to the landlord as well. In this regard we have the support of Paragraph 2 (f) of the Client Service Charter of the Respondent Revised Edition December, 2013 on page 7 which provides:

*Request the landlord to clear any outstanding bills of the new premises (TANESCO will not connect power to plots with debts even to new customers other than the former users unless the debt is cleared).*

Payment of bills by the tenant therefore is in the best interest of the landlord who in this case is the Complainant. No wonder Clause 2 of the lease agreement was drafted to ensure that the tenant does not leave behind unpaid



bills. It was the landlord's right and obligation to ensure that the tenant complied with this clause by paying all her bills including the last bill before vacating the premises. Nonpayment of bills would have been a breach of clause 2 of the lease agreement and therefore would have entitled the landlord to act. The Complainant therefore must have either informed the Respondent about the tenant's untimely intended departure or should have ensured that the tenant hands over premises with no outstanding bills. Unfortunately, the Complainant failed in both scenarios. This being our view therefore the Respondent is entitled to enforce Paragraph 2(f) of the Client Service Charter by claiming the unpaid bills from the landlord (Complainant).

We went a step further to consider whether the entire amount of TZS. 87, 931,146.95 of which TZS 37,426,864.55 being the outstanding amount and TZS 51,251,430.35 being the accrued interest for seven year is justified. CW testified that they were served with the said bill in 2017 three years after the tenant vacated the premises. Also, in 2020 the Respondent threatened to disconnect electricity at the Complainant's office premises which were located on the same plot. That, was when the Complainant filed a complaint at the Authority. The Respondent's witness RW1 was asked what took them so long to claim the outstanding bill and she said they were looking for the landlord. It was clear from the evidence that the landlord who is the Complainant in this case had office premises at the same plot where the rented premises were, although the said office has now moved to Kibaha. We were surprised at how the Respondent was looking for the landlord for 3 years from 2014 to 2017 when the first notice was served, while in fact the said landlord was having her office premises right on the same plot. Thereafter it took them three more years to seriously claim the debt leading to this complaint. At all that time the Respondent claims interest totaling the amount of TZ51,251,430.35. It appears to us that the Respondent acted with laxity and lack of seriousness in handling the matter. The Respondent cannot just seat back and expect to reward themselves with interest at a compounding rate. In our view the claim for interest is not justified. Based on the foregoing the outstanding debt is adjusted by removing the interest thereon and thus the Respondent is entitled to claim

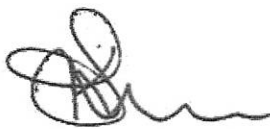
for the principal debt only. The complainant is therefore liable to pay the sum of TZS 37,426,864.55 only.

**3.2 What remedy, if any, are the parties entitled to?**

The Complainant is seeking for orders restraining the Respondent from claiming the debt of TZS. 87, 931,146.9 from the Complainant and from disconnecting electricity supply services at the Complainant's office. The Complainant also claimed for costs of the complaint. The Respondent on the other hand prayed that the Complaint be dismissed for want of merits and the Complainant be ordered to pay the outstanding bill with interest thereon and costs of the complaint.

As per our holding in the first issue partly allow the complaint to the effect that the disputed debt is reduced to TZS 37,426,864.55 which amount the Complainant is obliged to pay the Respondent. Parties are at liberty to agree on a payment plan based on which the Respondent will restore electricity supply to the disputed premises. Each party shall bear its own cost of the complaint.

**GIVEN UNDER THE SEAL** of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 28<sup>th</sup> day of October, 2021.



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**KAPWETE LEAH JOHN**  
**SECRETARY TO THE BOARD**