

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

COMPLAINT NUMBER: GA.71/309/50

DANVICK PETROLEUM LIMITED.....COMPLAINANT

VERSUS

MAFCO OIL LTDRESPONDENT

RULING

*(Made by the EWURA Board of Directors at its 164th Ordinary Meeting held on
the 31st day of May, 2021)*

1.0 Background Information:

On 10th May, 2017, the Energy and Water Utilities Regulatory Authority (“the Authority”) received a complaint from Victor A. Ndonde on behalf of Danvic Petroleum (T) Limited of P.O Box 11320 Dar e Salaam (“the Complainant”) against MAFCO Oil Limited of P. O Box 11270, 8th Floor RITA Tower Makunganya Street in Dar es Salaam (“the Respondent”). The Complainant is claiming against the Respondent for payment of TZS 225, 370,000.00 as a refund for undelivered petroleum products, interest transport, and communication costs.

The Complainant states that they started doing business with the Respondent on 15th March, 2016 where they transacted petroleum products worth a total of TZS 787,450,000.00. During this first phase of their business

relationship the Complainant claims that a consignment of petroleum products worth TZS 34, 337,500.00 was not delivered by the Respondent and therefore was taken over to the next phase. The Complainant states further that in the second phase of their business transactions they paid for petroleum products worth TZS 374,575,000.00 but only petroleum products worth TZS 310,000,000.00 were delivered. The Complainant claims that the total value for undelivered petroleum products for both the first and second phase is TZS 98,950,000.00. The Complainant states that efforts to resolve the matter amicably with the Respondent did not bear fruits hence this complaint. The Complainant claims that the money owed to the Complainant by the Respondent was a loan and therefore the Complainant has suffered interest at the rate of 12% per annum for twelve months from the date of default to the date of filing this complaint. Additionally, the Complainant claims for transport and communication expenses making a grand total of TZS 225, 370,000.00. The Complainant prayed for orders against the Respondent to compel them to pay them TZS 225, 370,000.00.

Upon receipt of the complaint the Authority wrote to the Respondent requiring them to submit their defence to the complaint in terms of Rule 5 (1) of the Energy and Water Utilities Regulatory Authority (Complaints Handling Procedure) Rules, GN No. 10/2013. On 22nd June, 2017 the Respondent submitted their defence and acknowledged that they had business relations with the Complainant in both the first and second phase. The Respondent further stated that they refunded the Complainant the substantial amount of money they owed them at the end of the transactions. The Respondent however, denied and refuted the rest of the Complainant's claims.

Efforts to mediate the matter which took place between August and October, 2017 were un successful and the matter was submitted to the Division of the Authority for hearing.

When the complaint came for hearing on 30th April, 2021, only the Respondent appeared. The Complainant did not appear and without excuse despite acknowledging receipt of the hearing summons. The Respondent therefore prayed that the complaint be dismissed for non-appearance of the Complainant. Further to the Respondent's prayer above, the Respondent challenged the Authority's letter dated 8th February, 2021 which in effect restored the complaint to be heard. The Respondent's argument was that the Authority's letter dated 11th August, 2017 which closed the complaint was signed by the Director General, and the Authority's letter dated 8th February, 2021 is also signed by the Director General. The Respondents' argument is that he would have expected a higher authority such as the Board to review the matter and issue a revoking letter but not the same person. He therefore cast doubts on the procedure which empowers the Director General to review and revoke his own orders.

We would like to start by stating that the Complainant, despite being dully served with the hearing summons on 31st March, 2021, failed to show up for the said hearing on 30th April, 2021 as ordered. The Complainant signed the delivery note acknowledging service. Further to that it was noted that the Complainant was called a day before the hearing and they confirmed both receiving the summons and their readiness to attend hearing on 30th April 2021. But for reasons best known to themselves the Complainant did not appear at the hearing.

The provision of Rule 18(2) of the Energy and Water Utilities Regulatory Authority (Consumer Complaints Dispute Settlement Procedure) Rules, GN.428 of 2020 states and we quote:

Where the Complainant fails to appear when the complaint is called for hearing, the Authority may make an order that the complaint be dismissed.

Although from the wording of the rule it is discretionary and not mandatory for the authority to dismiss a complaint for none appearance of the Complainant, we have considered the Complainant's conduct and we are satisfied that the Complainant has not been serious enough in prosecuting his complaint. The Complainant was offered a second chance when the complaint was restored in February, 2021 after he had failed to appear during mediation, but yet he continued to absent himself from the hearing for unknown reasons. We are therefore of the firm view that the circumstances and facts call for the dismissal of the complaint as per Rule 18(2) of GN. 428 of 2020. Having decided to dismiss the complaint, we find no need to venture more on the issue raised by the Respondent with regard to our letter dated 8th February 2021.

Based on the foregoing, we find no other remedy to the complaint than dismiss it in accordance with Rule 18(2) of the Consumer Complaints Settlement Procedure Rules, GN 428 of 2020 for failure by the Complainant to appear and prosecute the complaint. Each party to bear its own costs of the complaint.

GIVEN UNDER THE SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) at Dodoma this 31st day of May, 2021.



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KAPWETE LEAH JOHN
SECRETARY TO THE BOARD

