

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

COMPLAINT NUMBER: SN. 71/135/54

KARIBU ARTS AND CRAFTS LIMITED.....COMPLAINANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT

AWARD

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

1.0 Background Information:

On 10th July, 2019 Ms Joyce Hingi of P.O Box 4941 Dar es Salaam lodged a complaint at the Energy and Water Utilities Regulatory Authority ("EWURA") ("the Authority") on behalf of Karibu Arts and Crafts Limited, a limited liability company having its place of business at Mbezi Beach Jogoo Area, Dar es Salaam ("the Complainant") against the Tanzania Electric Supply Company Limited, ("TANESCO") ("the Respondent"). The Complainant is disputing a supplementary bill amounting to TZS 4,273,449 as revenue loss resulting from the Complainant's alleged tampering with the Respondent's electricity supply infrastructure.

The Complainant states that in May, 2019 the Respondent's staff visited her workplace at Mbezi Jogoo Area in Dar es Salaam and disconnected electricity supply to meter number 43148833645 which supplies electricity to her restaurant which is adjacent to her Arts and Crafts shop. Upon disconnecting

power at the disputed premises, the Respondent's staff asked the Complainant to go to their office to discuss the matter, which directive she complied with. The Complainant further claims that, upon visiting the Respondent's office, she was issued with a letter with reference number RM/KN/CONS/47 dated 4th February, 2015. The Complainant claims that the letter which was issued to her was four years old and it informed her that she owed the Respondent the sum of TZS 4,273,449.77 as revenue loss resulting from illegal use of electricity. The Complainant states that, this is the second power disconnection, following the first one which occurred on 3rd March, 2015; whereby the Respondent disconnected power to meter number 01320845025 which is used for the Arts and Crafts Shop on allegation of tampering with the Respondent's electricity supply infrastructure. The Complainant states further that, she was informed by the Respondent that the second disconnection was based on the fact that after the first disconnection, the Complainant through illegal means procured a second connection to avoid facing penalty for tampering with the first meter; a fact which the Complainant denies and contends that both meters existed prior to the inspection conducted in March, 2015. The Complainant therefore denies the allegations of tampering with the Respondent's electricity supply infrastructure and the liability for the amount of TZS 4,273,449.77 as revenue loss occasioned by the alleged tampering.

The Complainant filed this complaint to the Authority seeking orders to compel the Respondent to:

- a) cancel the alleged debt;
- b) issue new LUKU meters; and
- c) restore electricity supply service to both meters

Upon receipt of the complaint, on 10th July 2021 the Authority ordered the Respondent to submit its defense to the complaint within twenty-one [21] days as required by the EWURA (Consumer Complaints Handling Procedures) Rules, GN 428/2020 through a summons to file defense issued on 12th July, 2019.

The Respondent filed its defense on 31st July, 2019 and stated that they inspected the Complainant's premises on 3rd February, 2015 and discovered that the Complainant had by-passed the meter and connected direct to electrical appliances. Following the said inspection, the Respondent says they prepared the notice of revenue recoverable amounting to TZS 4,273,449.77 but was not served to the Complainant because she did not go to the Respondent's office as instructed after the disconnection in March 2015. The Respondent denied the rest of the Complainant's averments and put the Complainant to strict proof thereof.

Efforts to mediate the dispute did not succeed and therefore the dispute was referred to the Division of the Authority for hearing.

2.0 Hearing Stage:

During hearing which took place between October, 2020 and September, 2021, the Complainant's side was represented by Mr. Noel Nkonde, learned Advocate; whereas the Respondent was represented by Ms. Eva Mchau, the Respondent's Legal Officer. The following issues were framed for determination:

- 2.1 *whether the Complainant tampered with the Respondent's electricity supply infrastructure;***
- 2.2 *whether the Respondent's act of disconnecting electricity supply to the Complainant's premises was lawful;***
- 2.3 *whether the Complainant is liable to pay TZS: 4,273,449 as revenue loss to the Respondent; and***
- 2.4 *what remedies are available to the parties.***

During hearing the Complainant's side had three witnesses namely Ms. Amelie O. Uiso, the Complainant's Director who testified as "CW1", Joyce Nakijwa Hingi, the Complainant's Manager testified as CW2; and Pamela Pasida Uisso the daughter of CW1 who testified as CW3. The Complainant's side tendered six exhibits notably a Tariff 1-Meter Audit Sheet admitted as exhibit "C1", a

bunch of LUKU purchase receipts for both meters dating from 2011 admitted as exhibit “C2”, Meter Card No: 04061524866 marked gallery was admitted as exhibit “C3”, meter Card No: 04061289247 marked kitchen-gallery was admitted as exhibit “C4”, Meter Inspection Form dated 10th May 2019 admitted as exhibit “C5”, and the letter from the Respondent dated 4th February 2015 with three annexures:

- a) Appendix 1: Total load of customer Karibu Arts and Crafts meter No: 01320845025;
- b) Appendix 2: Meter audit sheet; and
- c) Appendix 3: Revenue loss analysis for meter No: 01320845025.

was admitted as exhibit “C6”.

The Respondent on the other side also had three witnesses one Dunia Juma Ngaraba, Meter Inspector of the Respondent who testified as “DW1”, Anderson Mavika, Artisan of the Respondent as “DW2”, and Mrisho Sangiwa, Revenue Protection Engineer, Eastern Zone Office of the Respondent who testified as “DW3”. The Respondent’s side did not tender any exhibits. After the hearing, both counsels filed final written submission for which we are very grateful.

3.0 The Decision:

In arriving at the decision, the Authority has considered the applicable laws which include the EWURA Act, Cap. 414, the Electricity Act, Cap. 131 (“the Act”), the EWURA (Complaints Handling Procedure) Rules, Government Notice Number 428 of 2020, the Electricity (Supply Services) Rules, Government Notice Number 387 of 2019, and the Electricity (General) Regulations Government Notice number 63 of 2011 as well as GN. No. 945 of 2020. The Authority has also considered the oral testimonies of the witnesses together with documentary evidence tendered during the proceedings as well as written submissions of the parties. The decision on the issues raised is as follows:

3.1 Whether the Complainant tampered with the Respondent's electricity supply infrastructure

In the fore most it is important to note that electricity supply services were restored to the premises following an interim order issued by the Authority. The prayer for restoration of the service is therefore no longer subject for determination. In his testimony CW1 denied any tampering with the Respondent's electricity LUKU meter which she had been using for the arts and crafts shop. CW1 stated that on 3rd February, 2015 the Respondent's staff stormed their premises and inspected their meter and then told her that they had a by-pass which diverted electricity from the pole to the appliances in the restaurant adjacent to the arts and crafts shop. CW1 said when she asked to see the alleged by-pass she was not shown instead she was just asked to sign an inspection form exhibit C1. CW1 says she refused to sign the form but the restaurant supervisor signed it presumably because he did not like the noise at the premises. CW1 further states that thereafter she was given a copy of the form and asked to go to the Respondent's office the next day. The rest of the Complainant's witnesses also denied seeing any by-pass or any tampering with the Respondent's infrastructure. CW1 further testified that the list of appliances listed on the **appendix 2** to exhibit **C6** were supplied by another meter number 43146833645 in the name of Alfred Amon. CW1 stated that the meter for the craft shop therefore had nothing to do with the kitchen or restaurant because the said restaurant was under a separate meter.

On the other hand, the Respondent's witnesses testified that the Complainant was found to have installed a by-pass cable on the bush brackets at the pole supplying the arts and crafts meter with S/N: 01320845025. According to DW1, the said by-pass diverted electricity and supplied to electrical appliances in a restaurant close to the arts and crafts shop. DW3 states that following the discovery of the alleged by-pass, the Respondent computed the amount of revenue loss which must

be recovered from the Complainant and the amount stood at TZS 4,273,449.77.

We have considered the testimonies by both sides on this issue as well as exhibit C1 the Tariff 1-Meter Audit Sheet and have the following to say. Exhibit C1 was prepared in accordance with Rule 48 of the Electricity (Supply Services) Rules GN. 387 of 2019. The said exhibit C1 was counter signed by the Complainant's representative one Elias Thomas and wrote his mobile phone number 0767325004. The Exhibit was also endorsed in capital with words "DIRECT BYPASS BY TAPPING POWER FROM THE BUSH BRACKET TO THE APPLIANCES. NOTE METER SHOULD BE REPLACED WITH SPLIT METER D.C ON BRACKET"

CW1 told the Division that she was issued with a copy of exhibit C1 and asked to go to the Respondent's office the next day. However, there is no indication that the Complainant ever visited the Respondent's office as instructed. Until 2019 when the second inspection was conducted and power was disconnected from the second meter; that is when the Complainant went to the Respondent's office and subsequently filed this complaint. We have asked ourselves if the by-pass allegations which led to disconnection of power to meter number 01320845025 supplying the arts and crafts shop were false why did the Complainant not complain? Why did they choose to continue with life as usual amid such serious allegations which would even have prompted criminal proceedings against them as the owner of the premises?

No plausible explanation was given by the Complainant except that there was not much need for electricity at the arts and crafts shop so they continued with business at the restaurant using the second meter with number 43146833645. It is our considered view that the aforementioned facts explains why the revenue recovery notice exhibit **C6** dated 4th February, 2015 was not delivered to the Complainant until 2019 when CW1 went to the Respondent's office following disconnection of power

to the second meter. DW2 testified that upon following up on the Complainant's debt they realized that the Complainant has not paid the outstanding debt since 2015. DW2 said they paid a visit at the Complainant and upon arrival they discovered that she had a separate meter for the restaurant and that is why she did not bother going to the Respondent's office to resolve the issue regarding the arts and crafts shop meter. DW2 said they decided to disconnect the second meter for the Restaurant presumably to force the Complainant to come to the discussion table or trigger the dispute. When asked for proof of installation for both meters so as to determine whether both meters existed before February, 2015, DW2 said he had no proof.

In further analysis we looked at the testimony of CW1 who at first appeared not to recognize Elias Thomas the person who counter signed the meter audit/inspection form but later during cross examination CW1 stated that Elias Thomas is the restaurant supervisor. CW1 further state that the restaurant business was operated by her tenant one Alfred Amon whose name appears on the restaurant meter registration. Both CW1 and CW2 admitted that they were constantly monitoring electricity consumption and purchase for the restaurant meter. But when CW1 was asked if the restaurant had its own meter why was it necessary for her to monitor its consumption, CW1 had no answer. It is our observation throughout the cross-examination conversation that CW1 had interest to protect in the restaurant business. This explains why she was keen on keeping an eye on the electricity cost for the restaurant. It would not surprise us if CW1 would have gone a step further in ensuring that electricity costs were kept low or avoided in order to increase her profit share in the restaurant business even if that would have meant to bypass the meter.

Besides the lack of explanation for her involvement in the restaurant business, CW1 further failed to explain, during cross examination, about the presence of a pipe as seen on appendix 3 of exhibit C6 which was tendered by herself. The cross examination was as follows:

RA: You stated that Respondent technicians terminated the services after seeing a by-pass. Is that correct?

CW1: I never saw any by-pass. They are the ones who said so.

RA: I pray to refer witness to appendix 3 of exhibit C6. Can you explain to us what was the pipe in the picture for?

CW1: There was nothing as by-pass, the pipe here is.... I do not understand these technical things.

CW1 failed to explain the presence of a pipe which contained a cable hooked on the brackets of the pole supplying power to the arts and craft shop. The said pipe contained a cable which by-passed the said meter and thereby fed electricity to the electrical appliances in the restaurant. The restaurant meter, if any, was therefore rendered redundant or of little use by the presence of the by-pass. This explains why the Complainant continued to purchase little electricity for other items such as lights since the major appliances were supplied by the by-pass cable.

In yet another attempt, CW1 and CW2 stated that the restaurant was under a separate meter and therefore, should not have been disconnected. The important issue here is whether there was a by-pass because whether the appliances were meant to be supplied by meter A or B a by-pass would still mean electricity was diverted from reaching the relevant meter and therefore using electricity unmetered. Therefore, in this case if we conclude that there was a by-pass the effect of the said bypass was to render the relevant meter be it meter number 43146833645 or 01320845025 of little or no use at all.

As pointed out above, appendix 3 of exhibit C6 is clear evidence of presence of by-pass. Further to that the desire by the Complainant to maximize profit at the restaurant by keeping electricity costs low, constitute the motive or reason for the Complainant to have bypassed the meter. In that regard we find that the Complainant indeed had by-passed the meter by hooking a cable on the bush brackets of the pole supplying the arts and crafts shop meter. The said bypass thereby

feedings directly restaurant electrical appliances which would otherwise be fed via a meter be it the restaurant meter or arts and crafts shop meter.

3.2 Whether the Respondent's act of disconnecting electricity supply to the Complainant's premises was lawful

In addressing this question, we refer back to Regulation 7 of the Electricity (General) Regulations GN. 63 of 2011 which was repealed and replaced with GN. 945 of 2020 with a similar provision cited below. In the event a customer is accused of tampering with equipment or infrastructure, the licensee is required to do the following:

7(1) where the licensee complains under the procedures prescribed under these regulations that the equipment and properties were tampered with maliciously or negligently causing physical or financial loss directly or indirectly to the licensee, the licensee shall:

- (a) immediately disconnect power supply at the customer's premises;*
- (b) notify the customer the amount in monetary terms of the physical or financial loss directly or indirectly caused to the licensee as a result of the tampering within forty-eight hours after the inspection;*

According to the cited Regulation, the Respondent was entitled and is empowered to disconnect power supply immediately and then notify the customer of the financial loss to be paid. In the case at hand the meter inspection on 3rd February, 2015 went simultaneously with disconnection of electricity supply to meter number 01320845025. The Respondent went ahead and prepared a notification for revenue loss to be recovered from the Complainant only that the said notice was never served to the Complainant until 2019. None of the parties took further action until May, 2019 when the Respondent while following up on the debt found that the

Complainant was using another meter and that explains why she neither approached the Respondent to resolve the issue regarding the first meter as was requested nor complained to the Authority against the disconnection. The Respondent therefore took the measure to disconnect power supply to the second meter which was supplying the very same electrical appliances which at first consumed electricity from the bypass cable. We find the Respondent's act of disconnecting power to both the first and second meter justified. In this matter the Respondent correctly exercised its rights and powers under Regulation 7(1) (a) of GN 63/2011, by disconnecting power and demand for payment of the revenue lost.

3.3 Whether the Complainant is liable to pay TZS: 4,273,449 as revenue loss to the Respondent for consuming electricity illegally

As pointed out above, the effect of the by-pass cable inserted in the Respondent's infrastructure was to supply or otherwise divert part of the electricity to avoid metering and thereby supply directly the Complainant's appliances. The Respondent used a load factor to compute amount of electricity consumed but unaccounted for as well as the financial loss occasioned by the Complainant. The basis of their use of load factor as per DW3 is because the bypass was committed before and outside the meter and therefore making it impossible to use meter error factor or consumption trend. That the only option suitable for the circumstances was the load factor.

The Authority has examined this argument in the light of the Electricity Act Cap. 131, as well as Regulation 7(1) (C) of the Electricity (General) Regulations GN. 63/2011 and GN. 945 of 2020 and came to the following conclusion. Once tampering has been established, the person responsible is liable to pay the financial loss occasioned as a result of such tampering. The Regulations provide under regulation 7 that:

7(1) where the licensee complains under the procedures prescribed under these regulations that the equipment and properties were tampered with maliciously or negligently causing physical or financial loss directly or indirectly to the licensee, the licensee shall:

(a).....

(b)

(c) Consider the financial loss basing on the consumption trend of the customer or installed capacity in establishing the cost of loss or damage; and

(d)

From the provision above it is therefore clear that there is a presumption that any person found to have tampered with equipment or infrastructure, has occasioned a certain financial loss. The computation of the said financial loss is provided for under sub-regulation (d) which forms the next discussion. We concur with the DW3 that since the bypass was outside the meter, then the most applicable method was the one of load factor. The Complainant tendered exhibit C6, which is a letter from the Respondent with appendixes 1, 2 and 3. The appendixes include the total load of the customer Karibu Arts and Crafts meter number 01320845025, Meter Audit Sheet and revenue loss analysis for meter number 01320845025. During hearing DW3 said that the period covered under the computation was 48 months (Jan. 2011 to Jan. 2015) and that he used the installed capacity or load factor to calculate the revenue to be recovered.

We have considered Regulation 7(1) of GN No. 63/2011 and have concluded that the said computation was not done in accordance with the regulation. The Regulation states in sub-regulation (d) quoted below:

7(1) (d) "In the course of calculating of revenue loss caused by tampering of a meter or installation, the period of financial recovery under consideration shall be the full period starting from

the date of year when commenced, but shall not exceed the date of immediate preceding inspection or in its absence, not more than twelve months counted backward from the date of current inspection". (emphasis our)

Although the Respondent was correct in using the installed capacity, they were wrong in the aspect of the period of recovery. The recovery period as per the cited Regulation is twelve months where the date of previous inspection has not been established. Since in this case neither party has record of previous inspection prior to the inspection of February, 2015 then the twelve-month rule must apply. The position is clear in the provision for recovery of revenue in tampering cases under regulation 7 (d) cited above. We have therefore, recalculated the revenue loss to be recovered at the tune of 1,068,362.25 which includes TZS 833,322.71 as principal amount, TZS 192,305.24 as VAT, TZS 10,683.62 as EWURA levy, and TZS 32,050.57 as REA contribution.

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

The Complainant's prayer was for orders that the Respondent be ordered to:

- a) cancel the alleged debt amounting to TZS 4,273,449.00;
- b) issue new LUKU meters; and
- c) restore electricity supply service to both meters

On the other hand, the Respondent prayed that the Complaint be dismissed and the Complainant be ordered to pay the supplementary bill of TZS 4,273,449.00. Based on our holding in the first, second and third issue above the complaint is hereby partly allowed by adjusting the amount of loss to be recovered from the Complainant to TZS 1,068,362.25 and no interest is awarded. Since the by-pass was done outside the meters then we see no need to order for replacement of the current meters. Further to that we are aware that electricity was restored

to the premises and therefore no further order is necessary to that effect.
Each party to bear its own costs.

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



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KAPWETE LEAH JOHN
SECRETARY TO THE BOARD