

**IN THE FAIR COMPETITION TRIBUNAL  
AT DAR ES SALAAM**



**TRIBUNAL APPEAL NO. 4 OF 2013**

**AYUBU SEIF SAID.....APPELLANT**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY**

**CO. LTD.....1<sup>ST</sup> RESPONDENT**

**ENERGY AND WATER UTILITIES REGULATORY**

**AUTHORITY (EWURA).....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Ayubu Seif Said, the appellant herein, lodged a complaint on 5<sup>th</sup> May, 2009 at the Energy and Water Utilities Regulatory Authority (also known by its acronym "EWURA" and who is a 2<sup>nd</sup> respondent) against Tanzania Electric Supply Company Limited (TANESCO), the 1<sup>st</sup> respondent herein, disputing a debt amounting to Tanzanian Shillings Five Million Three Hundred Thirty Three Thousand Three Hundred Twenty Thousand and

Twenty Five Cents Only (Tshs. 5,339,320.25), on ground that the said debt is unjustifiable. It was alleged by the appellant that although he paid Tshs. 780,000/= to settle the outstanding debt, the amount was still high.

Having received the complaint on 19<sup>th</sup> May, 2009 the 2<sup>nd</sup> respondent wrote to the 1<sup>st</sup> respondent to work on the complaint with a view to resolving the matter amicably within 14 days and report back to EWURA on the progress made. The 1<sup>st</sup> respondent replied in her letter dated 2<sup>nd</sup> June, 2009 to the effect that Appellant was negligent in paying his bills and thus accrued interests. The amount of Tshs. 5,422,893.88/= as at 2<sup>nd</sup> June, 2009 was an accumulation of unpaid bills whereby Tshs. 2,088,315/= is actual debt and Tshs. 3,333,578/= is the accrued interest. The letter by the 1<sup>st</sup> respondent was tendered by the appellant and received as exhibit C1 by the Board of EWURA, who issued the award being challenged by the appellant before this Tribunal.

According to exhibit C1, the 1<sup>st</sup> respondent upon receipt of the complaint in 2007 they conducted an inspection of appellant meter in October, 2007 and discovered some errors in respect of meter reading of 15 September, 2006. It was revealed by the 1<sup>st</sup> respondent that the meter reading appearing on the bill of 4<sup>th</sup> November, 2002 onwards were higher than what appeared on the complainant's meter. The 1<sup>st</sup> Respondent corrected the error.

The total amount for the bills issued between 4<sup>th</sup> November, 2002 and October, 2007 were revised from Tshs. 4,532,937.40 to Tshs. 2,077,114.16. After revision of the bills, the 1<sup>st</sup> respondent agreed with complainant that new LUKU meter be installed at the appellant's premises to ensure accurate consumption of power. LUKU meter was to be installed upon following condition being met by the appellant namely: (i) Payments of Tshs. 36,000/= and (ii) an agreement in which appellant can settle the outstanding bills within specified period.

According to annexure C1, the Appellant did not enter into agreement with 1<sup>st</sup> Respondent to settle the outstanding debts of Tshs. 2,077,114.16. Consequently, the LUKU meter was not installed as agreed. Six month later, that is, 17<sup>th</sup> April, 2008 power was disconnected from the appellant's premises due to non payments of the outstanding debts. The 1<sup>st</sup> Respondent disclosed through annexure C1 that after power disconnection, the appellant reconnected power to his premises. He was given informal warning on 2<sup>nd</sup> June, 2008 and further instructed to pay Tshs. 91,000.00/= and Tshs. 150,000/= on 3<sup>rd</sup> and 19<sup>th</sup> June, 2008 respectively. The 1<sup>st</sup> respondent further revealed that on 14<sup>th</sup> August, 2008 a new LUKU meter (Number 01340347218) was installed at the appellant's premises. The 1<sup>st</sup> Respondent gave the appellant last reading of his old meter showing 7744 units amounting to Tshs. 5,358,878.14. The appellant was again requested to enter into new agreement with the 1<sup>st</sup>

Respondent to settle the outstanding debt, which he did not heed to the request.

Despite several correspondences between the appellant, the 1<sup>st</sup> respondent and ultimately the 2<sup>nd</sup> respondent, the appellant did not pay the bills. He, then, lodged a complaint with EWURA against the 1<sup>st</sup> respondent (TANESCO) referred as complaint No. 33/1/40.

In spite of the absence of the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent came to the conclusion that the appellant has failed to prove his complaint. Being dissatisfied, the appellant lodged this appeal before this Tribunal raising one ground of appeal to wit:

“That, Regulatory Board erred in law and fact by failing to recognize the receipt bearing no debt against the appellant herein as a settlement of the debt after the appellant having paid the whole debt”.

On the date set for hearing of this appeal, Mr. Ayub Seif Said (the appellant) argued his own case. He briefly submitted that 7744 units of electricity he had used, the price should not have exceeded Tshs. 698,000/=. The appellant asserted that TANESCO, the 1<sup>st</sup> respondent, demanded Tshs. 2,893,150/=. The appellant further submitted that he paid Tshs. 2,547,650/= to settle the outstanding amount, being more than what he is required to pay. Mr. Ayub Seif Said requested the Tribunal to

order refund of the money paid in excess, without mentioning the exact amount to be refunded.

The 1<sup>st</sup> respondent, represented by Mr. Steven Urassa, learned counsel, submitted in reply that, the appellant complaint is on the 2<sup>nd</sup> respondent failure to re-evaluate the evidence tendered. According to the records, the evidence tendered, exhibit C1 being a letter dated 2<sup>nd</sup> June, 2009 from the 1<sup>st</sup> respondent indicating the debt of Tshs. 5,422,893.88 together with interests. Actual debt being Tshs. 2,893,150/=. There is no dispute that the appellant has consumed 7744 units of electricity from the 1<sup>st</sup> respondent.

Mr. Urassa submitted that the appellant has raised new issue that the value of 7744 units is Tshs. 698,000/=:, as in the proceedings there was no such issue. Mr. Urassa further submitted that, the appellant who tendered exhibit C1 did not object to the costs of the units mentioned in exhibit C1. The 1<sup>st</sup> respondent is the one who set the price of 7744 units. The cost of units was the issue to be discussed at EWURA not at the appeal level as it is being raised for the 1<sup>st</sup> time, insisted the 1<sup>st</sup> respondent's counsel.

Further submission was made by Mr. Urassa that, the appellant admitted to have paid Tshs. 50,000/=. There was no any evidence to prove that the appellant paid more than Tshs. 50,000/=. Mr. Urassa wondered if the principal debt of Tshs. 2,893,150/= can be discharged by payments of Tshs. 50,000/=.

The 1<sup>st</sup> respondent's counsel finalized his submission by urging the Tribunal to dismiss the appellant's case for lack of merits.

Mr. Juvenalis Ngowi represented EWURA (the 2<sup>nd</sup> respondent). Like the 1<sup>st</sup> respondent counsel, he was of opinion that the appellant failed to prove his case. Mr. Juvenalis Ngowi relied on annexure C1 tendered by the appellant himself indicating debt of Tshs. 5,422,893.88. Mr. Ngowi further submitted that, the appellant did not ascertain in his complaint the value of 7744 units of electricity he is disputing claimed by TANESCO, the 1<sup>st</sup> respondent.

In general, like the 1<sup>st</sup> respondent's counsel, Mr. Ngowi submitted in summing up that, regardless of the amount that the appellant is ascertaining being Tshs. 2,893,150/= or Tshs. 698,000/= or Tshs. 5,422,893/=, the appellant did not prove that he paid the amount claimed.

By way of rejoinder, the appellant insisted that he is complaining on the price for 7744 units amounting to Tshs. 698,000/= and not Tshs. 5,422,896/= basing on the price of the year 1998 - 2001.

According to the grounds of the appeal, reply to the memorandum of appeal, skeleton submissions and oral submissions of both parties, it is clear from the records that, the appellant is not disputing that he consumed 7744 units through his conventional meter. The same units were swapped to his

LUKU meter. The appellant complaint is the amount of Tshs. 5,339,321/= being principal debt and interest. To the appellant, the principal debt of Tshs. 2,893,150/= is also disputed. To him, the units 7744 are valued at Tshs. 698,000/=. According to the appellant he has paid more than what he is supposed to pay. He even requested Tribunal to order the 1<sup>st</sup> respondent to refund what was paid over and above Tshs. 698,000/=.

We totally agree that the appellant has raised new issue when he submitted that, the value of 7744 units is Tshs. 698,000/=. When the matter was before the 2<sup>nd</sup> respondent, the issue was whether 7744 units were properly charged to amount to Tshs. 5,339,321/=. Be what it may, that is, 7744 units is equal to Tshs. 698,000/= as claimed at appeal level or is equal to Tshs. 5,339,321/= as claimed by the 1<sup>st</sup> respondent in annexure C1, was the price of 7744 discussed by the 2<sup>nd</sup> respondent? Before answering the question posed by the Tribunal, let's re-visit the function of 2<sup>nd</sup> respondent (EWURA) in brief.

To appreciate the issue at hand, it is necessary to reproduce the relevant statutory provisions of EWURA Act and Electricity Act:

Section 6 - Duties of the Authority

It shall be the duty of the Authority that in carrying out its functions it shall strive to enhance the welfare of Tanzania society by-

- (a) promoting effective competition and economic efficiency;
- (b) protecting the interest of consumers;
- (c) protecting the financial viability of efficient suppliers;
- (d) promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers;
- (e) enhancing public knowledge, awareness and understanding of the regulated sectors including-
  - (i) the rights and obligations of consumers and regulated suppliers;
  - (ii) the ways in which complaint and disputes may be initiated and resolved; and
  - (iii) the duties, function and activities of the Authority;
- (f) taking into account the need to protect and preserve the environment.

Section 7 (1) – The functions of the Authority shall be-



- (a) to perform the functions conferred on the Authority by sector legislation;
- (b) subject to sector legislation-
  - (i) the right and obligations of consumer and regulated suppliers;
  - (ii) to issue, renew and cancel licence
  - (iii) to establish standards for goods and services;
  - (iv) to establish standards for the terms and conditions of supply of goods and services;
  - (v) to regulate rates and charges;
  - (vi) to make rules;
- (c) to monitor the performance of the regulated sectors in relation to-
  - (i) levels of investment;
  - (ii) availability, quantity and standard of services;
  - (iii) the cost of services;
  - (iv) the efficiency of production and distribution of services; and
  - (v) other matters related to the Authority.
- (d) .....

- (e) to facilitate the resolution of complaints and disputes;
- (f) to disseminate information about matters relevant to its functions;
- (g) to consult with other regulatory authorities;
- (h) to perform such other functions as are conferred on the Authority;
- (i) to administer this Act.

Section 7(4) of the Act reads as follows:

Section 7(4) – In addition to the preceding provisions of this section, the Minister may, from time to time as occasion necessitates it, give to the Authority directions of a specific or general character on specific issues, other than in relation to the discharge of the regulatory functions, arising in relation to any sector, for the purposes of securing the effective performance by the Authority of its policy, functions and compliance with the code of conduct.

Under sections 16 and 17 of the Act the respondent has powers to regulate rates and charges. The relevant parts of sections 17 read as follows:

"Section 16-(1) – Subject to the Provisions of this Act, the Authority shall have powers to do all things which are necessary for or in connection with the performance of its functions or to enable it to discharge its duties.

- (2) Without limiting the powers conferred under subsection (1), the Authority shall also have the following powers:
- (a) such powers as may be conferred on it by the sector legislation;
  - (b) the power to appoint an administrator to manage the business of a regulated supplier whose licence to operate has been cancelled as may be provided under sector legislation.

**Section 17-(1) - Subject to the provisions of sector legislation and licences granted under the legislation, the Authority shall carry out regular reviews of rates and charges.**

**(2) In making any determination, setting rates and charges or establishing the method for regulating such rates and charges, the Authority shall take into account-**

- (a) the costs of making, producing and supplying the goods or services;**
- (b) the return on assets in the regulated sector;**

- (c) **any relevant benchmarks including international benchmarks for prices; costs and return on assets in comparable industries;**
- (d) **the financial implications of the determination;**
- (e) **the desirability of establishing maximum rates and charges, and in carrying out regular reviews of rates and charges;**
- (f) **any other factors specified in the relevant sector legislation;**
- (g) **the consumer and investor interest; and**
- (h) **the desire to promote competitive rates and attract market;**
- (i) **any other factors the Authority considers relevant. (Emphasis ours)**

(3) The Authority shall publish in the Government Gazette all the rates, tariffs and charges regulated by the Board.

Section 34(1) – This section shall apply to **any complaint against a supplier of regulated goods or services in relation to any matter connected with the supply, possible supply or purported supply of the goods or services. (Emphasis ours)**

- Section 35(1) – The Authority may make order-
- (a) requiring a party to pay money;
  - (b) requiring a party to supply goods or services for specified periods;
  - (c) requiring a party to supply goods or services or specified terms and conditions;
  - (d) requiring a party to pay the costs of another party or of a person appearing at the hearing or producing documents;
  - (e) dismissing a complaint.

Sections 6(1), 26(5), 31(2)(3) and 33 (2) of the Electricity Act, No. 10 of 2008 provide as follows:

- Section 6(1)- The functions of the Authority in relation to electricity supply industry shall be to:
- (a) protect consumers interests through the promotion of competition;
  - (b) promote access to, and affordability of electricity services particularly in rural areas;

- (c) promote least-cost investment and the security of supply for the benefit of consumers.
- (d) promote improvements in the operational and economic efficiency of the electricity supply industry and efficiency in the use of electricity;
- (e) promote appropriate standards of quality, reliability and affordability of electricity supply;
- (f) take into account the effect of the activities of the electricity supply industry on the environment;
- (g) protect the public from dangers arising from the activities of the electricity supply industry; and
- (h) promote the health and safety of persons in the working environment employed in the electricity supply industry.

We have carefully considered the respective arguments and submissions presented by the contending parties in this matter in the context of the relevant statutory provisions produced hereinabove.

In discharging its function as explained above, the 2<sup>nd</sup> respondent must act in accordance with section 31 of the Electricity Act to the effect that, if there is any dispute on the amount to be paid arising out of consumed units, the 2<sup>nd</sup> respondent is duty bound to appoint Electric Inspector to ascertain the amount of units consumed and its price.

That particular technical expertise is not part of the records, before this Tribunal. Can the Tribunal be able to ascertain the price of 7744 units? Certainly not. In the course of arguing his appeal, the appellant has tried to explain and show to this Tribunal several receipts he has paid after the decision by the 2<sup>nd</sup> respondent and claim that he has paid over and above the amount required. With due respect, the appellant cannot bring new evidence at appeal level without following procedures. Otherwise it will amount to reopening the matter for hearing, as rightly pointed out by Mr. Urassa for the 1<sup>st</sup> respondent.

We are satisfied that the price of 7744 units of electricity consumed by the appellant was not ascertained by the 2<sup>nd</sup> respondent. This Tribunal, being mandated by rule 38(b) of Fair Competition Tribunal Rules, G.N. No. 219 of 2012 is hereby directing the 2<sup>nd</sup> respondent to ascertain the price of 7744 units of electricity consumed by the appellant, and reconcile with payments made by the appellant, if any. The appellant is

required to settle the outstanding bill without fail. Following the nature of the appeal each party to bear its own costs.

It is so ordered.

DATED at Dar es Salaam this 24<sup>th</sup> day of October, 2014.



**Judge Z. G. Muruke, Chairman**



**Prof. Adolf F. Mkenda, Member**



**Mr. Onesmo M. Kyauke, Member**

Judgment delivered this 20<sup>th</sup> day of November, 2014 in the presence of Mr. Ayub Seif Said in person, Ms Dora Mallaba holding brief of Mr. Jevenalis Ngowi, for the 2<sup>nd</sup> Respondent and in the absence of the 1<sup>st</sup> respondent duly notified.





**Judge Z. G. Muruke, Chairman**



**Mr. Onesmo M. Kyauke, Member**

**20/11/2014**