IN THE FAIR COMPETITION TRIBUNAL
AT DAR ES SALAAM

APPEAL NO. 11 OF 2017

BETWEEN

TANZANIA ELECTRIC SUPPLY LTD.......................APPELLANT

AND

MILKA KISOTA..1ST RESPONDENT

EWURA..2ND RESPONDENT

(Appeal from the decision of the Energy and Water Utilities Regulatory Authority in Complaint No. 33/1/425 dated 7th day of June, 2017 and delivered at Morogoro Region on 12th day of July, 2017)

JUDGMENT

Two issues dealt at the trial, i.e by the Regulatory Authority (The 2nd Respondent herein) were: -

(a) Whether the Respondent (The Appellant herein) act of adjusting the electricity bill served to the Complainant (The 1st Respondent herein) from TZs 5,356,315.97 to TZs 14,504,463.07 was justifiable; and

(b) What relief(s) the parties were entitled, if any.

After hearing the parties, the 2nd Respondent came to the conclusion that the Appellant's act of adjusting the electricity bill served to 1st Respondent

from TZs 5,356,315.97 to TZs 14,504,463.07 was unjustified. The Appellant was ordered to recover only TZs 5,356,315.97 from the 1st Respondent. The Appellant was further ordered to refund the 1st Respondent any excess money she has paid in the course of settling the unjustified debt. No costs were awarded to any party.

The Appellant having been aggrieved with the afore decision, lodged the instant appeal on the following grounds: -

1. That, the 2nd Respondent erred in law and fact for failure to consider the fact that the electricity units stolen by the 1st Respondent and raised by the Appellant were the same in both instances.
2. That, the 2nd Respondent erred in law and fact for failure to address and calculate the actual amount which the 1st Respondent was supposed to pay in first place for the electricity units she stole from the Appellant.
3. That, the 2nd Respondent erred in law and fact for holding that the Appellant entered into agreement with the 1st Respondent to settle the claim he had against her.
4. That, the 2nd Respondent erred in law and fact for holding that the amount claimed by the Appellant was unjustifiable.

The Appellant therefore, asked this Hon. Tribunal for the following orders: -

(a) That, the decision that the Appellant should refund the 1st Respondent any excess money she had paid apart from Tshs 5,356,315.97 be reversed and the Appellant be allowed to recover the remaining amount from the 1st Respondent to settle the amount claimed of Tshs 14,504,463.07

(b) Any other order(s) as the Tribunal may deem fit to grant.

(c) Costs of this Appeal be provided for.

At the hearing of the appeal, the Appellant was dully represented by learned Counsel Theresia Masangya. The 1st Respondent appeared in person and the 2nd Respondent was dully represented by learned Counsel Hawa Lweno.

On the 1st ground of appeal, the Appellant argued that on 14th day of August, 2014 the Appellant in its letter stated the amount of electricity stolen in units which are 36,902 KWh. Also, in the letter dated 25th day of October, 2015 the appellant indicated the same number of stolen units, that is, 36,902 KWh. The Appellant asked this Tribunal to note that the amount of electricity units stolen at all times were the same and it never changed. What changed was the formula used.

As on the 2nd ground of appeal, the Appellant submitted that during the proceedings the 2nd Respondent did not want to direct itself to know the actual amount which was supposed to be paid by the 1st Respondent to the Appellant. The Appellant therefore believes that the 2nd Respondent is supposed to regulate the relationship between the Appellant and the 1st

Respondent. Thus it was not proper and correct for the 2nd respondent to know exactly the amount required to be paid by the 1st Respondent that would guarantee the service supplier and client relationship.

In respect of the 3rd ground of appeal, the Appellant argued that the 1st Respondent was found to have stolen electricity. That, the 1st Respondent is a thief like any other thief. That Criminal offences are dealt with the Republic. At no point in time the Appellant could enter into settlement agreement to a Criminal offence and criminal offence has no time limit.

The Appellant went on to argue that, a letter dated 14th day of august, 2014 was wrongly interpreted by the 2nd Respondent especially when one reads the last paragraph that required the 1st Respondent to disclose a person who assisted her so that further action could be taken. So, it is the Appellant's view that it was not proper to interpret that the Appellant and the 1st Respondent entered into agreement to settle the debt.

With regard to the 4th ground of appeal, the Appellant contended that it was correct for the Appellant to claim for its right from the 1st Respondent because there was an error in calculating the debt.

In response, the 1st Respondent generally submitted that she is the owner of the property which she rented it to Edward Harison. She said after expiration of six months the 1st Respondent received notification from the neighbors that her house has been disconnected with electricity. By that

time, the 1st Respondent was not at home so she had to ask her sister Irene to make a follow up. Irene went to TANESCO where was served with a letter dated 14th day of August, 2014 that required her to pay for 36,902 Kwh units of the electricity stolen. She said she went to discuss with TANESCO Engineer, TANESCO Regional Manager and TANESCO Secretary and it was agreed that she should pay TZs 316,000 which she did pay on spot on that date that is on 22nd day of August, 2014. The 1st Respondent said she continued to pay the debt up to 6th day of August, 2016 and the debt will be finalized in the next month to come. The 1st Respondent further contended that on 25th September, 2015 TANESCO went to her house and changed the meter from single phase to three phase without her consent so she had to go to TANESCO to complain only to be told that there is another letter regarding the debt. The 1st Respondent believed that the persons who did calculation at the first time and at the second time were the same as such they were negligent. She further said she was never summoned by the Appellant and wondered why it took them two years to react in the mistakes they made. In the view of the 1st Respondent, the 2nd Respondent made justice and was not biased.

The 2nd Respondent on her part, first prayed to adopt their reply to the Memorandum of Appeal and reiterated that the units were not an issue but the issue was failure of making notification of adjustment of the bills. It was replied further that, there was an error in making calculations due to TANESCO's negligence as they used incorrect formula. The 2nd Respondent had obligation to maintain service provider and client relationship. That, the

Appellant agreed for the existence of the agreement. A letter dated 24th day of October, 2016 shows that there was an agreement between the Appellant and the 1st Respondent.

In their written reply to the Memorandum of Appeal, the 2nd Respondent had disputed the first ground of appeal. They stated that the number of unit stolen was not in dispute rather the adjustment of the bill from TZs 5,356,315.97 being the bill issued at first instance to the second bill of TZs 14,504,463.07 issued two years after the first bill was in dispute. The second Respondent further state that, the Award clearly describe how the units stolen were considered in making its decision.

According to the 2nd Respondent, the second ground of appeal is misjudged and doomed. That, the 2nd Respondent confined itself to the issues raised in the pleadings and during hearing. It was the duty of the Appellant to justify with evidence that, the calculations as of 2014 were underestimated due to formulae error and the time took the Appellant to inform the 1st Respondent on the error was reasonable enough to reverse the previous representation made by the Appellant.

The 2nd Respondent also averred that, the 3rd ground of appeal is totally unfounded. That, the Appellant was in the position to rebut the 1st Respondent version on the existence of the Settlement Agreement of the amount the Appellant charged the 1st Respondent at the first place. The Appellant admitted to have such agreement

and that it is barred by the doctrine of estoppel from denying the representation it previously made and the 1st Respondent had acted upon. Further, the 2nd Respondent averred that, from pleadings and issues agreed, the existence of settlement agreement was not a disputed fact.

The fourth ground of appeal was also disputed by the 2nd Respondent to the extent that the decision of unjustifiability of the adjustment was based on the evidence, testimonies adduced and the Appellant diligence.

In rejoinder, the Appellant was of submission that change from single to three phase is done after noting the trend of units consumed. That, once the units are more consumed then it is the responsibility of TANESCO to change the meter.

The Appellant submitted that supplementary bill is issued once a customer bill was incorrectly issued. That, what the Appellant is claiming here is the actual bill and not the incorrectly billed amount.

It was further rejoined that, the Appellant is a business entity minded to recoup. That, if it was an agreement then it was on how to settle the bill but not to pardon her theft offence. The Appellant admitted to have delayed but it was due to the fact that audit is done annually.

We have heard counsels' submissions and it is for this Tribunal to determine the grounds of appeal. Before dwelling into the grounds, we wish to narrow down non-contentious issues. It is undisputed among the parties that the first Respondent committed a crime of by-passing her electricity meter. It is further not in dispute that the stolen units were 36,902 KWh. Furthermore, it is not disputed that initially through the letter dated 14th day of August, 2014 the Appellant directed the 1st Respondent to pay the sum of TZs 5,356,315.97 as costs of stolen electricity of which the 1st Respondent willingly agreed to pay through installments.

It is on record that by a letter dated 25th day of October, 2015 the Appellant after re-calculating the costs of the stolen units discovered that there was a miscalculation thus directed the 1st Respondent to pay a total sum of TZs 14,504,463.07.

The 1st Respondent through her submission before this Tribunal did not dispute that there was miscalculation. She maintained that the persons who did calculation at the first time and at the second time were the same and negligent and wondered why it took almost two years to react for the mistakes the Appellant made.

Though we agree with the Respondents that the Appellant has demonstrated untold negligence in demanding the correct bill from the 1st Respondent, we are of the firmed view that a mere delay and miscalculation of the stolen units cannot exonerate the 1st Respondent from paying the actual debt. The

1st Respondent can neither take advantage of benefiting from her own wrong of meter by-passing nor benefit from the negligence of the Appellant's first officers who miscalculated the net debts from the stolen electricity units and who took almost two years to demand payment of the correct bill. The duty to pay the correct electricity bill does not flow from the negligence of the Appellant's officers in miscalculating the bill but from the uncontested units spent by the 1st Respondent which are 36,902 KWh. These units are not contested by the Respondents.

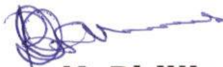
Regarding settlement agreement, we concur with the counsel for the Appellant that meter by-passing being a criminal offence cannot be settled amicably through payment of a lesser sum. We find it to be highly improper on part of the second Respondent to treat a letter dated 14th day of August, 2014 as a settlement agreement between the Appellant and the 1st Respondent. In any event, there is no proof that the proper bill is Tshs. 5,356,315.97. Rather, after we have gone through the records, we did find tht there are ample evidences to prove the actual bill amounts to Tshs. 14,504,463.07. This is reflected at the Audit done on 11th day of August, 2014. With that in mind and with the fact that there is no time limit for the Appellant to claim the legal bill from the units spent by the 1st Respondent through meter by-passing we find the findings of the 2nd Respondent not justifiable and cannot be left to stand.

In the end, we allow the Appellant's appeal by quashing and setting aside the decision of the 2nd Respondent. According to the facts of this matter we

make no order as to costs because the Appellant greatly contributed to the controversies due to the negligence of its officers in calculating the correct bill from the units spent by the 1st Respondent during meter by-passing. It is so ordered.

Dated at Dar es Salaam this 18th day of January, 2018.

Judge Barke M.A. Sehel – Chairperson



Mrs. Butamo K. Phillip – Member

Mr. Yose J. Mlyambina – Member

18/01/2018

Delivered this 18th day of January, 2018 in the presence of Theresia Masangya, learned counsel for the Appellant, 1st the Respondent in person and Hawa Lweno, learned counsel for the 2nd Respondent.

Judge Barke M.A. Sehel – Chairperson

Mrs. Butamo K. Phillip – Member

Mr. Yose J. Mlyambina – Member

18/01/2018