IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 12 OF 2021

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED (TANESCO).....APPELANT

VERSUS

BIOSUSTAIN (T) LIMITED .....1ST RESPONDENT

ENERGY AND WATER UTILITIES REGULATORY AUTHORITY (EWURA).....2ND RESPONDENT

JUDGMENT

The 1st Respondent, Biosustain (T) Limited is a client of the Appellant herein, a Government entity responsible for the production and supply of electricity in the country. She consumes services of the appellant in the form of electricity. The 2nd Respondent, the Energy and Water Utilities Regulatory Authority (EWURA) is an autonomous multi- sectoral regulatory authority established by the EWURA Act, Cap. 414 of the Laws of Tanzania. The dispute that culminated into this appeal arose on 27th April 2020 when the 1st Respondent received a letter from the Appellant, in which the Appellant informed her on payment of a Supplementary Bill amounting to TZS 26,535,568.82 as revenue

recovery following the Meter inspection conducted on her business premises on 21st February 2020.

Following some correspondences between the Appellant and the 1st Respondent, on 06th November 2020, the Appellant reviewed the Supplementary Bill to TZS 19,445,183.08 on the basis of information provided by the 1st Respondent including exclusion of days where the 1st Respondent was not in operation. Still disputing against the Supplementary Bill, the 1st Respondent proceeded to lodge a complaint before the 2nd Respondent on 10th December 2020.The parties were called for mediation by the 2nd Respondent on 18th and 19th February 2021 out of which no compromise was reached. The complaint was thus forwarded for determination which was conducted by the 2nd Respondent on 8th and 9th June, 2021.

Having heard the parties, on 15th September, 2021, the 2nd Respondent made a decision in favor of the 1st Respondent on the basis of failure to comply with the laid down legal procedures and lacking justification of the Supplementary Bill issued by the Appellant. Aggrieved by the decision of the 2nd Respondent, on 04th October 2021 the Appellant lodged this Appeal on the following grounds:

1. That, while the problem discovered from the 1st Respondent Meter was mismatch in all phases voltage and current, the 2nd

Respondent erred in law in holding that photographing of the Meter was imperative as per Rule 48(5) of the Electricity (Supply Services) Rules, GN No. 387 of 2019.

2. That, while the inspection of Meter found the Meter registering 12kWh instead of 65.5 kWh, thereby occasioning loss to the Appellant's revenue, the 2nd Respondent grossly erred in law in holding that slowness of Meter registration did not occasion loss to the Appellant and that the Supplementary Bill was unjustified.
3. That, the 2nd Respondent erred in law in holding that the Appellant's method of calculating revenue loss was flawed.

On those grounds, it was the Appellant's prayer that:

(1) All the proceedings, decisions and orders of the 2nd Respondent be quashed and set aside.

(2) A declaration that Rule 48(5) of the Electricity (Supply Services) Rules, GN No. 387 of 2019 does not cover every aspect of meter inspection.

(3) That this appeal be allowed.

(4) Cost of this appeal be provided.

(5) Any other relief this honorable Tribunal may deem just and equitable to grant.

When the matter was tabled for hearing before this Tribunal on 09th November 2022, the Appellant was represented by Mr. Edwin Webiro and Ms. Angela Kingu (State Attorneys), the 1st Respondent

was represented by Advocate Elisha Daniel. On her part, the 2nd Respondent was represented by Mr. Kessy Mgonela (State Attorney). By consent of parties upon a prayer tabled by Mr. Webiro, the matter was disposed of by way of written submissions. The Appellant was required to file her written submission by 29th November 2022, Respondents by 14th December 2022 and rejoinder, if any by 23rd January 2023.The parties complied with the Tribunal's order and submitted their written submissions. The Tribunal appreciates the submissions tendered by the parties and in light of the same.

Having analysed the submissions as outlined by parties, we came to an observation that there are four issues for determination by this Tribunal:

1. Whether photographing is imperative/ mandatory requirement during inspection of Meters.
2. Whether the Supplementary Bill issued by the Appellant is justifiable.
3. Whether the method of calculating the Supplementary Bill by the 2nd Respondent was related to the slowness of the Meter or voltage and current mismatch in all phases.
4. Relief(s) that the parties are entitled to.

Submitting on behalf of the Appellant, Mr. Webiro reiterated that the audit exercise was conducted on in-site Meters to all power users connected to TANESCO low voltage and high voltage network

in Singida Region, including that of the 1st Respondent. An audit on the 1st Respondent revealed that the meter had voltage mismatch in all phases and reversal of current in all phases, which caused slowness in meter registration in kWh by -96.3%. This resulted to the loss of the Appellant's revenue to the tune of TZS 19, 445,183.08.

He went on submitting that when the 1st Respondent was made aware of the audit findings; she disputed the findings on the ground that the procedures for Meter inspection were flawed and questioned the legality and justification of the raised Supplementary Bill. Thereafter she filed the complaint to the 2nd Respondent on 3rd December, 2020. The Appellant further received the summons from the 2nd Respondent requiring her to file statement of defense. The same was filed on 9th January, 2021, disputing the allegations raised by the 1st Respondent and insisting on the legality and justification of the audit process and the Supplementary Bill raised as a result of the audit.

In support of the first ground of appeal, Mr. Webiro showed his entire subscription to the general rule laid by Rule 48(5) of the Electricity (Supply Services) Rules, G.N No. 387 of 2019 on the procedures to be followed during meter inspection. The proviso requires the licensee to take the readings of the Meter, details of the outer and inside of the Meter **and take as many photos as**

necessary during the whole exercise. The Learned State Attorney reproduced the provision hereunder for ease of clarity;

> ***"A licensee shall, during meter inspection exercise, take the readings of a meter, details of the outer and inside the meter and take as many photos as necessary during the whole exercise."***

The Learned State Attorney further submitted that despite their varieties and types, Meters generally comprise of two components, the termination part and the intelligence part. The termination part, is a part where the electric cables enter to the Meter and the intelligence part, is a part where the microprocessor of the Meter is situated. He compared the two to engine of the car, where the gas is burned and produces speed for the car to move. His interpretation extended to the proviso in Rule 48 (5) as he suggests that the act of taking photographs was meant for the part of *intelligence of the meter* where there might be bypass, tempering and or cuts intended to retard and or to halt the registration of the meter. It is considered that such acts are obvious and tangible maneuvers which can be easily noticed thus an implication that photographing would hold water in such situation.

He then argued that in the instant case, **the problem of the 1st Respondent was on the termination part of the Meter, which involved improper installation of the cables entering the Meter** which was rectified through troubleshooting method with

close support from AMR center in Dar es Salaam office who were in phone call for about 2.30 hours. In the circumstances, he argued, where troubleshooting was adopted in resolution of the matter on site the learned counsel finds no importance to the use of photographing. He further questions on a number of photos which would have been taken under troubleshooting method even inquiring on the possibility of taking photos to evidence troubleshooting of a Meter.

The Learned State Attorney finally submitted to the impossibility of photographing of the troubleshooting method which was adopted by the technicians in resolving the problem and that even if it had been taken, it would have nothing to show in the meaning of Regulation 48(5) of the Electricity (Supply Services) Rules, GN No. 387 of 2019. The requirements of taking photographs were meant to reveal the bypass, cuts and or any tangible maneuvers done on the Meter (intelligence part) intended to slow and or halt registration of electricity and not otherwise. He contended that Regulation 48(5) runs short of addressing the whole scenario of Meter inspection, which may include troubleshooting method in the termination part. This, according to the Learned State Attorney, may render impossibility to the art of photographing as envisaged by the said provision.

On the 2nd ground of Appeal Mr. Webiro attests to the audit forms filed by the Appellant in the presence of the 1st Respondent's

representatives as provided by the exhibits D1 and D2. Before rectification of the Meter, he submitted, the Meter was reading 12kWh with very low power factor of 0.14 despite the huge load it was consuming at that time. According to him, this signifies that, despite the normal load the meter was measuring, registration was very slow and power factor was very low as well and, if this does not have revenue impact to the Appellant what else does it imply? He further submitted that after rectification of the Meter through troubleshooting, registration jumped to 65.5 kWh with 0.84 power factor. Since the slowness of Meter registration had occasioned loss to the Appellant, the Appellant was justified to raise the Supplementary Bill to the 1st Respondent which she needs to pay.

On the 3rd ground of Appeal, the Learned State Attorney reiterated that the method for calculating the loss occasioned was just, proper and was in accordance with Rule 8 (2) of the Electricity (General) Regulation GN No.945 of 2020 which provides for the proper method to be followed when calculating revenue loss and its wordings are crystal clear and are devoid of any ambiguity or misunderstanding. He further quoted the proviso in extenso for clarity as follows:

> *"in the course of calculation of revenue lost, the period of recovery under consideration shall consider* ***full period starting the date when the loss commenced****, but shall not exceed the date of the immediately preceding*

inspection; ***in its absence, twelve months counted backward from the date of current inspection."***

He then argued that in essence, the period for calculation of loss occasioned starts when the loss commenced, and the Appellant was proper on basing the calculations on the date of October, 2019 and did not exceed the date after the inspection. Since the Meter malfunctioned for 5 months on a span, it was imperative for the Appellant to find the average of the 3 highest billed months so as to get the actual bills of the malfunctioned months as per Annexure D3, Appendix 2.

In reply to the first ground of appeal, Mr. Elisha submitted that the 2nd Respondent correctly held that the inspection was conducted contrary to the laid down procedures. He elaborated that on 21st February 2020, the Appellant conducted Meter inspection and took reading of the Meter details of the outer and inside of the Meter without taking any photos whatsoever, contrary to the provision of **rule 48 (5) of the Electricity (Supply Services) Rules GN. 387 of 2019.** He argued that the rule was coached in mandatory terms that during the said exercise inspection the appellant **shall** take photos as many as necessary.

He submitted that the 2nd Respondent correctly held that the word 'shall' in this provision means that the requirement is mandatory as per the provision of Section 53 (2) of the Interpretation of the

Laws and General Clauses Act. Cap 1 R.E of 2019 which provides that;

> *'Where in the written law the word shall is used in conferring a function such words shall be interpreted to mean the function so conferred must be performed.'*

He then argued that the appellant failed to comply with the said provision of the law on the ground that there was no meter tempering and that she is guided by the common practice. That the 2nd Respondent correctly rejected the Appellant's justification as common practice and internal practice or rules of procedures are required to comply with the provision of the Act and its regulation as clearly provided under the provisions of Rule 48(9) of the Electricity (Supply Services) Rules GN. 387 of 2019.

As submitted in the evidence of RW1, he pointed, the problem with the Meter was both physical and electronic thus photographing the alleged mismatch cables was necessary to cover the physical part of the problem. That the Meter was wrongfully installed and it was corrected on the terminal side, the correction involved switching off the cables which were not properly installed. In this case, he submitted, there was supposed to be pictures showing before the correction of the error and after the correction of the error. The Learned Counsel avers that the Appellant owns the Meter, she installs the Meter, records the Meter readings and inspect the same. He further noted that one week before the said inspection, the Appellant changed the Meter seal and suggests that the 1st

Respondent did not temper with the meter. Additionally, no pictures were taken to indicate that the Meter was not tempered with. Taking these facts into consideration, the 1st Respondent is in a disadvantageous position as photos were necessary to make the inspection transparent and clear of doubt. Since there are no photos, the said inspection is full of doubt and cannot be relied on to prove that the appellant suffered loss of income.

With regard to the second ground of appeal the Mr. Elisha submitted that the Supplementary Bill is unjustifiable as correctly held by the trial division. The Appellant is not legally allowed to issue Supplementary Bill due to Meter malfunction resulting from installation errors, wrong revenue computation method, illegal inspection, the Appellant's own wrongdoing and unrealistic and unjustifiable inspection outcome. The learned Counsel further implies that Meter malfunction due to installation errors does not entitle the appellant to raise Supplementary Bill. Additionally, the testimony of RW1 implies that the slowness in meter registration was caused by wrongful meter installation which is the Appellant's fault. Meter malfunction due to installation errors does not entitle the Appellant to raise Supplementary Bill. The only error that entitles the Appellant to raise Supplementary Bill are errors in preparation of the bill as per rule 50 of the Electricity (Supply services) Rules GN no 387 of 2019.

With regard to the revenue computation method, Mr. Elisha concurred with the 2nd Respondent that, in light of Regulation 8 (2) of Rule 50 of the Electricity (Supply services) Rules GN No. 945 of 2020, customer consumption trend was supposed to be considered. That if the 2nd Respondent considered the period of recovery to be October 2019 to February,2020 then the 2nd Respondent ought to have considered the Complainant's consumption trend for the like period of the previous or following one or two years.

As per the comparison of consumption trend, he argued that the 2nd Respondent correctly held that the decrease in consumption for the period October and November 2019 cannot be attributed to the Meter malfunction but technical break down which caused the factory to stop functioning for many days. Comparing the recovery period with a similar period in 2020 and 2021 as per the table there was a drop in the 1st Respondents' consumption bill in October and November. That the trial division correctly held that the drop was not attributed to Meter malfunctioning, but due to Press break down that caused factory to stop working from 15th October 2019 to 12th November 2019. Another cause of drop was due to a transfer cable breakdown from 21st to 23rd November, 2019. This is corroborated by exhibit D tendered by the 1st Respondent and exhibit D4 also tendered by the Appellant.

On the comparison for December 2019 where the factory was operating normally, Mr. Elisha submitted that it indicates that the consumption for December 2019 is higher than that of December 2020 by TZS 3.9m. This contradicts the existence of Meter malfunction. For January 2020 and January 2021, the differences are small and thus not worthy of consideration. For February 2020 and February 2021, the difference is TZS 7.3 m however given the consumer trend this is the beginning of off-season thus the decrease is justifiable.

He went on submitting that the Supplementary Bill cannot be justified when the procedures have not been followed. The inspection was conducted contrary to the laid down procedures as earlier submitted. Throwing out 'the outcome of illegally obtained Supplementary Bill' would undoubtedly incentivize the Appellant in conducting inspection in accordance with the law. He argued that the Supplementary Bill is the fruit of illegal inspection therefore the same is unjustifiable in the eyes of the law. That allowing Supplementary Bill is the green light for the Appellant to violate laws and abuse its inspection power conferred by the law. He further averred that it is undisputed that the outcome of the Meter inspection showed that the slowness in meter registration was caused by wrongful meter installation which is the Appellant's fault. It is thus undisputed that the 1st Respondent did not temper with

the Meter and that Meter malfunction was due to installation errors caused by the appellant's negligence.

He went on submitting that it is further undisputed that two, three or four weeks before the inspection there was another inspection whose intention and outcome was not disclosed. There were no answers as to why if the error began in October 2019, they were notified by the inspection conducted two weeks prior to the impugned inspection. That it is on evidence the Meter has a cover/door which was locked and the keys are kept by the Appellant's staff. There was no evidence during the hearing that the cover to that Meter was broken which signified tampering by the 1st Respondent.

The 1st Respondent thus prayed for invocation of the fundamental principle of the law that no man shall profit from his own wrong since the alleged loss of income, if any, was caused by Appellant's own negligence by wrongfully installing the Meter. He hence prayed that the Appellant be responsible for her own act of wrongful installation of the Meter thus issuing Supplementary Bill to the 1st Respondent is the same as punishing the Respondent for the Appellant's own wrongful acts.

The Learned Advocate considers the outcome of the inspection unrealistic and unjustifiable inspection as no clear explanation was

provided to that effect. He sheds light on the outcome of the inspection, following an under reading of a meter at - 96.3% as submitted by RW1 which was not explained. He questions that if the audit report indicates unreality of the occasioned loss, then there was no proof of loss of revenue since the appellant relied on the said audit report to prove that there was error that occasioned loss of revenue. For all the foregoing reasons the 1st Respondent humbly request that this honorable Tribunal dismisses the appeal with costs, together with any other reliefs as this Tribunal will deem fit and just to grant.

On his part, Mr. Baraka Butoto Masora, Learned State Attorney vying for the 2nd Respondent took note of the routine Meter inspection conducted by the Appellant that necessitated issuance of a Supplementary Bill of TZS 19,445,183.08 on 6th November 2020. He then submitted that it is undisputed that the Appellant's inspection exercise was conducted in contravention of the requirements of Rule 48(5) of Electricity (Supply Services) Rules, G.N. No. 387 of 2019 which states that:

> *"A licensee shall, during the inspection exercise, take the readings of a meter details of the outer and inside the meter and take as many photos as necessary during the whole exercise".*

His construction of the rule is to the effect that any inspection under rule 48 shall be termed to have been legally complied with if the licensee takes the readings of the Meter to be inspected, takes the details of the outer and inside Meter and take as many photos as necessary. He noted that there is no proof that the pictures to assist in knowing if the seals were intact were taken. He questioned whether the failure to take photo is not fatal enough to render the Supplementary Bill unjustified? In response to the question, the Learned State Attorney takes note of page 22 and 23 of the proceedings to which he suggests that there was a probable issue of tampering from the first instance as one can only establish tampering after troubleshooting process. He cements that on the basis of all issues, compliance with Rule 48(5) of Electricity (Supply Services) Rules, GN. No. 387 of 2019 is vital and that RW1 being an experienced inspector ought to have known that whichever action by her had a legal and financial consequence including litigation. Knowing the implication of results of inspection, the appellant ought to have complied with rule 48(5) of Electricity (Supply Services) Rules, GN. No. 387 of 2019 by taking pictures of the process in which even a single picture was not submitted during hearing stage.

Mr. Mgonela further submitted that the fact that the Meter contains two parts including termination and intelligence part cannot hold water to vitiate that requirement. One cannot establish the physical

problem without the troubleshooting and in such understanding the evidences of the inspector's report start to be generated from the time the meter is opened. Knowing that the action by the Appellant ought to have financial implications, it was imperative to take all the precautions. The absence of photos and other details, made it worse for non-compliance to this requirement.

On the second ground of appeal, that while the inspection of the Meter found it registering 12kWh instead of 65.5kWh thereby occasioning loss to the Appellant's revenue, the Learned State Attorney echoes that the Supplementary Bill was unjustified as per its decision issued on 30th August 2021. That the decision made was based solely on the evidence submitted and that upon scrutiny the Supplementary Bill became unjustified. The Learned State Attorney further quotes the proceedings on page 24 with regard to clarifications on the alleged voltage mismatch in all phases and reversal of current in all phases which caused slowness of the Meter registration in kWh by -96.3% resulting to the alleged loss of TZS. 19,445,183.08. He was not inclined to accept the Appellant's explanation that registration is equivalent to recording as numbers can't lie adding to lacking explanation by the Appellant's witness on the alleged mismatch which is suggested to have been the cause of the slowness in Meter registration. He argued that the act has left several questions unanswered such as what does Meter registration refer to? Does slowness in registration mean under

registration or even non-registration at all? The fact that the Meter was slow in registering does not necessarily mean the Meter did not fully register the same.

Mr. Mgonela then delves into the analysis of the numbers submitted by the Appellant in memorandum of appeal which suffices an argument that recording of the readings was only 3.7% of the total consumption equivalent to a total of **TZS 103,358,455** for the month of October, November, December, 2019 and January and February 2020 against the -96.3% of the consumption that was not recorded and charged equivalent to **TZS 279, 243,816,680.18** for the same months. According to him, exemplary this means that 96.3% of the consumption were not recorded and only 3.7% were recorded and charged. He argued that from the Appellant's submission it is imperative that, the total consumption if 100% was recorded and charged was supposed to be **279,347,175,135.08** for the month of October, November, December 2019 and January and February 2020 against **103,358,455** that was recorded at 3.7%. he questioned whether it was possible for the 1st Respondent to have consumed such power just for only five months? What was the consumption for other months? Are the consumptions from other months proportionally equivalent to these readings? In his view, the answer stands to be NO and thus the legality and justifiability of the claim by the Appellant stands to have a big question to be

answered and the submission by the Appellant has left the same unanswered.

In light of the above, the Learned State Attorney stresses on the correctness of the 2nd Respondent's decision as there was no proof that the cause for the technical problem purported to have been found by the Appellant's inspection was caused by the 1st Respondent rather the problem as evidenced in the proceedings on page 17 existed due to improper installation of the meter by the Appellant himself thus his own fault. The Learned State Attorney further asks, how can a fault by the service provider himself be a burden to the customer? From the same position the learned State Attorney gathers that the Supplementary Bill issued by the Appellant was unjustified as there was no evidence on the required standard to support the fact that the installation error if any, occasioned loss of revenue on the Appellant's part.

On the third ground of appeal, the Learned State Attorney submits that the method used by the Appellant to calculate the Supplementary Bill stands for more clarification and justification.

Having heard the parties' submissions as noted earlier, the Tribunal hereby proceeds in consideration of the three pertinent issues brought forward and argued by all the three parties. On the first ground of appeal with regard to the mismatch of voltage on all

phases and current, parties submitted on whether photographing of the meter was mandatory as per Rule 48 (5) of the Electricity (Supplies Services) Rules GN 387 of 2019. The Appellant argued that this was not mandatory but a matter of general practice, the 1st Respondent and the 2nd Respondent was of the position that the use of the word "shall" made it mandatory for the Appellant to comply with the rule and hence the need for photographing Meter of the 1st Respondent during inspection. Whereas the 1st and 2nd Respondent arguments were hinged on the requirement of Rule 48(5) and Section 53(2) of the Interpretation of Laws and General Clause Act Cap. 1 R.E 2019, the argument presented by the Appellant was based on general practice. This is not justifiable, the Tribunal thus finds no relevant reason as to why the Appellant failed to comply with its own operational rules.

We further agree with the position of the 1st and 2nd Respondent that photographing the Meter inspection process conducted on the factory of the 1st Respondent on 21st February 2020 was mandatory as per the requirements of Rule 48(5) of the Electricity (Supply Services) Rules G.N 387 of 2019. That it was mandatory for the Appellant's Inspection Team to photograph the Meter and all relevant sequence of events and or activities performed during the inspection of the Meter at the 1st Respondent's premises which was carried out on 21st February 2020. This is a mandatory requirement of Rule 48(5) of the Electricity Supplies Service Rules GN 387 of

2019 read together with Section 53(2) of the Interpretation of Laws and General Clauses Act, Cap. 1 RE 2019. It is therefore our considered view that the provisions of Rule 48(5) of of Electricity (Supply Services) Rules, G.N. No. 387 of 2019 have been couched in mandatory terms thus deserving of strict adherence to that effect. Any failure to adhere to the rule must have strong substantiated reasons which on our part, the mere allegation by the first respondent that Regulation 48(5) runs short of addressing the whole scenario of Meter inspection, which may include troubleshooting method in the termination part may render impossibility to the art of photographing as envisaged by the said provision is not, in our strong view, sufficient to justify the omission.

On the second ground of the appeal, the Appellant avers that she suffered a loss of TZS 19,445, 183.08 due to the slowness of the Meter installed on the 1st Respondent's ginnery. The Appellant also agreed to have noted that, during the inspection on 21st February 2020 the Meter was NOT tampered with. From the records of proceedings and written submissions, the Meter is a property of the Appellant, she (the Appellant) is the one who is responsible for keeping the access key to opening and closing the area leading to where the meter is housed or installed. The Appellant further presented that after noting that there was a mismatch of voltage in all phases and current reversals in all terminations, he corrected the error and proceeded to issuing a "Supplementary Bill of TZS

26,535,568.52 on 27th April 2020 which was later reduced to TZS 19,445,183.08 on 6th November, 2020. In arriving at our conclusion on the second ground of appeal, in line with the findings of the 2nd respondent, we have based our view as held by on a set of factors including:

1. the Appellant's sole access rights to the area where the meter is housed;
2. the Appellant's sole capability is to determine and correct the errors in the meter;
3. the Appellant's acknowledgement that the access to the lock of the meter and both to the outside and the inside of the meter was NOT tampered with.

These factors leave the ultimate responsibility and any liabilities to the Appellant with regard to the performance of the Meter under question including its slowness of recording 12KWh instead of 65.5KWh alleged to have been noted by the Appellant's Inspection Team.

We have also noted that in her further presentations and evidence, the Appellant did not explain how the named slowness in Meter reading was established and how it was connected to the amount of the Supplementary Bill and the alleged loss percentage of 96.3% for every one KWh registered by the 1st Respondent's meter. In the proceedings, the Appellant held that the bill of TZS 103,358,455 recorded by the 1st Respondent's Meter from October 2019 to 21st

February 2020 was 3.7% of what was supposed to have been recorded. In other words, if the 1st Respondent's Meter was not in error and was recording 100% of the consumption that period, calculations performed by the Tribunal indicate that the 1st Respondent was supposed to be billed for TZS 2,793,471,757. The difference between this total bill and 3.7% that was billed for the period (TZS 2,793,471,757 - TZS 103,358,455) is **TZS 2,690,113,302,** equivalent to 96.3% of the KWh consumption alleged to have not been recorded by the 1st Respondent's Meter.

Despite the fact that a bill of **TZS 2,690,113,302/=** for five months is unrealistic as it does not bear any correlation with the 1st Respondent's billing historical trends, the Tribunal fails to see why the Appellant didn't bill the 1st Respondent for this amount and instead billed a figure of TZS 19,445,183.08. The Tribunal noted the Appellant's inconsistency with regards to how the supplementary Bill was arrived and noted that the Appellant failed to prove how the same was connected to the alleged KWh recording slowness of the 1st Appellant's Meter.

It was also noted in the records of proceedings that the Appellant visited the 1st Respondent's premises some weeks before the Meter inspection date of 21st February 2020 where they were seen opening the 1st Respondent's Meter but neither did they disclose

the purpose of the visit NOR did they notify the 1st Respondent about this unexpected visit. Such un-notified and unexplained visit casts doubt on the alleged unusual behaviour of the Meter at the 1st Respondent's site when argued together with the fact that according to the Appellant, the Meter started behaving abnormally in October 2019, a few weeks after Appellant's Technicians un-notified visit.

The question one would ask him/herself is how the Meter by itself is capable of creating a mismatch of voltage in all its phases or currents reversals at its termination points. If the meter is not capable of this, then two options could be considered as being reasons for such reversals; First, the fault in voltage profile in the Appellant's supply system could be thought of as possibility for voltage mismatch in phases. Second reason is attributable to the reversal of currents at terminal connection or what could be termed (but not necessarily conclusive) as "intentional tampering" by the Appellant Technicians since from the proceedings, the Appellant keeps the access key to the Meter and that her technicians who made an un-notified visited to the 1st Respondent's site weeks before the official inspection without disclosing the reason for such a visit.

Further in the proceedings, the Appellant admitted that the Meter was NOT tampered with at the time of inspection. This rules out

any possibility that the 1st Respondent tempered with the Meter or reversed current terminals in the Meter leaving that possibility to the Appellant Technicians and Inspection Team.

The Tribunal further noted that Rule 24(2)(d) read together with Rule 46 of the Electricity (Supply Services) Rules GN 387 of 2019 provides that, it is the responsibilities of the Appellant to supply electricity which meets prescribed quality profile and waveform, and to maintain its Metering Systems in optimum and just operation to ensure that no bill over-charges or under-charges are passed to its customers, which in this case, includes the 1st Respondent.

Following the above findings, the Tribunal observed that the slowness of the Meter and the associated loss occasioned as a result, are the liabilities of the Appellant and should not be passed on to the customer, that is, the 1st Respondent in this case. The Tribunal finds no liability as to the side of the 1st Respondent and it is the decision of the Tribunal that it finds no justifiable reason or merit to fault the decision of the 2nd respondent.

On the last ground of the appeal, the Appellant calculated the Supplementary Bill of TZS 26,535,568.52 by averaging the last

THREE months of the 1st Respondent's bills for months of July, August, September 2019, which are months before the Meter slowness problem which the Appellant alleged to have started in October 2019 through to 21st February 2020 when the Meter inspection was conducted on the 1st Respondent's site. In our observation however, the Supplementary Bill was later revised on 6th November 2020 to TZS 19,445,183.08, following information availed to the Appellant by the 1st Respondent regarding reduced ginnery operations in October 2019 due to "Press Machine Breakdown" and again in November 2019 due to Transformer Cable Default.

On the side of the 1st and the 2nd Respondent, their argument was that the calculation was supposed to be based on the bills for "equivalent MONTHS for the years 2019, 2020 and or 2021" to capture for seasonality of power consumption variation factor pertinent to the ginnery operations of the 1st Respondent's factory. 1st and 2nd Respondent further argued that the "Supplementary Bill of TZS 19,445,183.08 did NOT show how it was connected to the "Slowness of 12KWh versus 65.5KWh or its connection to the Slowness percentage of 96.3%".

The Tribunal noted that, notwithstanding the fact that the 1st Respondent was not liable to pay the Supplementary Bill of TZS 19,445,183.08 as explained and decided by this Tribunal above on

ground two of this appeal, the method of bill calculation adopted by the Appellant is inconsistent as it is not based on the alleged Meter slowness of 97.3% and hence lacks merit. Further to that, even if the bill calculation was to be based on this level of Meter slowness, the Supplementary Bill for the five Months (October 2019 to 21st February 2020 would amount to TZS 2,690,113,302/= which makes it an unjustifiable electricity consumption for the ginnery of the scale owned by the 1st Respondent. This level of consumption is not supported by the 1st Respondent's historical trends of bills from the Appellant.

Considering the above arguments as put forward in respect of ground three of this appeal, it is the Tribunal's finding that the method used to calculate the Supplementary Bill is inconsistent with the alleged Meter slowness and hence lacks merit notwithstanding the fact that it is "null and void" on the basis of "liability of the loss" which is on the Appellant as argued and decided in ground two of this appeal. This ground also lacks merits.

In conclusion therefore, we find this appeal to be devoid of merits and it is hereby dismissed with costs awarded to the 1st respondent.

Hon. Judge Salma M. Maghimbi – Chairperson

Dr. Hanifa Massawe – Member

Eng. Gisima Nyamo-Hanga - Member

This Judgment delivered this 13th day of March, 2023 in the presence of Mr. George Bega, Advocate for the 1st Respondent, Ms. Leah Mley, learned State Attorney for the 2nd Respondent and in the absence of the appellant.

Hon. Judge Salma M. Maghimbi – Chairperson

Dr. Hanifa Massawe – Member

Eng. Gisima Nyamo-Hanga – Member

13/03/2023