

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 17 OF 2018**

**KASSIM SULEIMAN..... PLAINTIFF**

**VERSUS**

**THE DIRECTOR GENERAL TANZANIA**

**ELECTRIC SUPPLY COMPANY LIMITED.....DEFENDANT**

**JUDGMENT**

*Date of last order: 15/06/2022*

*Date of Judgment: 22/07/2022*

**E.E. KAKOLAKI J.**

Before this Court, in Civil case No. 17 of 2018 and by way of plaint dully filed on 25<sup>th</sup> day of January, 2018, the plaintiff sued the defendant for unlawful billing of electricity services provided to him and removal of the Meter from his business premises. As can be gleaned from the plaint, the plaintiff Kassim Suleiman is the businessman operating milling machines at Kiwalani area within Ilala Municipality in Dar Es Salaam Region, the machine which its operation depends on supply of power (electricity) from the defendant. It is the Plaintiff's averment that, on 20<sup>th</sup> June, 2009, the defendant moved his meter from the wall and fixed it on nearest high tensile electric pole for

security purposes. He alleges was paying his bills timely as can be evidenced by tax invoices. It appears that, in 2015, the defendant officials disconnected the power from his business area on the allegations that, he had bypassed the three phase Meter and continued enjoying free electricity in his business premises without being properly billed. When complained to the defendant over the act, the defendant on 23<sup>rd</sup> July 2015 notified him the reasons for the disconnection of electricity and that, he was supposed to pay Tsh. 20,677,983.65, as a loss of revenue suffered by the defendant at all time when the meter was by passed. The plaintiff tried unsuccessfully to reach amicable settlement with the plaintiff for more than 2 years and six months the result of which he issued her with a notice of 21 days to restore the power but defendant ignored him. It is the plaintiff's complaint that, the defendant's act of disconnecting the power from the milling machine caused him inconveniences and loss of business. To remedy the situation the plaintiff had to file the instant suit praying for Judgment and decree against defendant on the following:

- (i) A declaration that, the respondent had unlawfully disconnected power supply to the plaintiffs milling machine at Kiwalani by 15<sup>th</sup> July, 2015.

- (ii) An order that respondent tax invoice for payment of Tsh. 20,677,983.65 dated 2<sup>nd</sup> December, 2015, is null and void.
- (iii) Any other relief (s) which this Honourable Court may deem fit to grant.

When served with the plaint, the defendant strongly resisted the Plaintiff's claim. In her Written Statement of Defence, she vehemently disputed the assertion of illegal disconnection of power from the plaintiff's premise, contending that, when conducted inspection in Ilala special TANESCO Region and plaintiff was among the customers who were found to have bypassed the electricity from the meter and that is why they disconnected the electricity. In other words she subjected the plaintiff's claims to strict proof. Due to the above contested assertions by the plaintiff, four issues were agreed by the parties, framed and adopted by the Court for resolving parties dispute going thus:

- (a) Whether the meter No. 209414617 was unlawful removed from the custody of the plaintiff.
- (b) Whether the defendant had unlawful issued the bill of TZS. 20,611,911.00 by 23<sup>rd</sup> July,2015.

- (c) Whether the defendant had on the 15<sup>th</sup> July, 2015 unlawful disconnected electricity from the plaintiff's milling machine at Kiwalani in Ilala Municipality, Dar es Salaam.
- (d) What remedy or relief(s) are the parties entitled to.

During the hearing, the plaintiff appeared in person together with his authorized personal representative with special power of Attorney, one Timothy Alvin Kahoho, who later on 13/05/2022 withdrew himself from the conduct of this matter. The defendant at all material time enjoyed the services of Ms. Mahatane, learned counsel. The plaintiff case was made of two (2) witnesses, the plaintiff himself Kassim Suleiman (PW1) and Ramadhani Hussein Ramadhani (PW2) and supported by nine (9) exhibits while the defendant defended herself through two (2) witnesses and two (2) documentary exhibits.

Testifying on oath in support of plaintiff's case, PW1 (Kassim Seleman) told the Court that, he is a businessman having two milling machines at Kiwalani are within Ilala Municipality since 2007, and the defendant's client by using electricity supplied from her. He said, in June 2009 defendant's workers transferred his meter from the wall of the building where the milling machines are installed to the electric pole of high tensile, claiming to be for

security purposes and that they would be reading the same from their office in the computer. He stated that, defendant also changed the meter from LUKU meter system to a normal meter with meter No. 201414617. According to him, he used to receive and pay all of his bills and to prove that fact, PW1 tendered invoices dated 7/10/2013, read on 01/09/2013 (Exhibit P1), invoice of 02/06/2014 charging Tshs. 140,454. (Exhibit P2) and invoice dated 12/03/2015 (Exhibit P3) where a total of Tshs. 300,000 and Tshs. 347,000 were paid respectively.

His further testimony was that, after payment of the last bill on 20/06/2015, TANESCO officials without justification and in his absence on 15<sup>th</sup> July 2015, disconnected the power from the milling machines site, though when he arrived there, the technicians had not yet left the site. When ask them the reasons for such disconnection of power, the technicians told him to consult TANESCO Ilala Region. He said, on 16/07/2015 in an attempt to restore the service met with the regional manager at TANESCO regional office, where he was issued with the letter requiring him to pay Tsh.20,611,911.00 arising from illegal use of electricity service after bypassing the two phases from the meter (exh.P4) which was followed by another letter of 23/07/2015 (Exhibit P5). According to him, the milling machines could not receive direct power

bypassed from the meter as the motors would be damaged. And added that, if the alleged bypass of the two phases existed, the TANESCO system could have detected it or recorded it. In his further efforts to plead TANESCO to restore the service on 28/09/2015, this witness wrote the Director General for TANESCO (Exhibit P6) complaining about payment of the fine of Tshs. 20,611,911.00 meted to him allegedly for bypassing the meter (two phases), and informing him that, the meter was placed outside on the electric poles, thus it was impossible for him to interfere with or temper with it. He contended further that, his letter was not replied instead he received another bill dated 02/12/2015 (Exhibit P7) charging Tsh.20,677,983.65. In response to that bill he said, a Notice of intention to sue (Exhibit P8) was issued to the defendant demanding her to restore the uninstalled meter No. 209414617 to the milling machine within 21 days.

When placed under cross examination as to when he started using the three phased meter, PW1 said, he applied for three phase meters in 2008 after purchasing the suit premise, which by then had a single phased meter. On further questioning whether he had any evidence to discredit the contents of Exhibit P4 that explained to him of the bypassed electricity, he said had none. And when questioned as to whether he had ever reported any meter

defect before the power disconnection, he said has never, except absence of electricity and further that, he never asked TANESCO to show him the alleged bypassed wires after disconnection rather was given explanation for such disconnection of power.

Under re-examination this witness said, the three phased meter was applied through a contractor after paying the installation fee and thereafter received the services. He concluded that, from 2008 to 2013 the production of his milling machines ranged from 10 to 15 tones. He thus prayed the Court to grant him the prayed reliefs.

PW2 was the second plaintiff's witness. As the machine operator and manager of the milling machine since 2008, his testimony was centered on transfer of the meter from milling machine building to the electric pole by TANESCO officials on 20/06/2009, and disconnection of the electric power on 15/07/2005 by the defendant. He corroborated PW1's evidence that, there was no bypass, as the machine motor could collapse if had received direct electricity without passing through the meter. He said, after disconnection he was given a document to sign to prove that the defendant disconnected the power but the reason for such act was not given to him. In short other evidence was a replica of PW1's evidence. When under cross examination by

Ms. Mahatane, this witness confessed to have little experience on electrical phases to assist him report technical problem if any occurs but denied to have applied it to bypass the meter. He said, he came to know the reasons for the disconnection of electricity only after his employer had made follow-up at TANESCO. That in short marked the end of the plaintiff's case.

On the other hand the defendant lined up her defence through one Aneth Rocky Mattaba, Senior Revenue Accountant (DW1), and Emmanuel Peter Kyara, a revenue protection Artisan and Inspector of LUKU (DW2).

Testifying on oath, DW1 stated that, the Plaintiff is one of her customers in Ilala TANESCO special region. And that, as the officer from the revenue protection unit and maintenance, she is always availed with reports from clients who have technical issues interfering with the defendant's revenue. She said, in making revenue decision in her daily duties she is always guided with laws, regulations or guidelines such as, TANESCO engineering instructions, EWURA regulations, directives from the Ministry of Energy and the Accounting manual. Her further testimony was that, upon receipt of the report from the protection unit officer which is normally in the inspection form filled by the officers and the client, she normally accesses client's account as per the engineering instruction Manual, 9<sup>th</sup> Edition in order to



establish the client's electricity consumption rates during the time in which he/she is alleged to have violated power consumption procedures.

Concerning the present case, she said, on 15/05/2015 the maintenance officers brought her a report of the client (plaintiff) who was enjoying the services unlawful. That, she entered into plaintiff's account from the date it was opened until the date of inspection as per TANESCO Distribution Engineering Instruction Manual, 9<sup>th</sup> Edition (Exhibit DE1), and prepared a spreadsheet showing the client's electricity consumption history, basing on the average of normal usage by the client versus the meter readings or usage average at the time of tempering with either meter or bypassing it. According to her, the average of normal usage is obtained in a period of not less than six months before consumption from when it started getting low. She clarified that, the normal average is used to calculate the difference of unpaid used electricity for the period in which the client was under unlawful consumption of service i.e average use minus actual use during unlawful consumption which gives the unpaid or bypassed units. She went on testifying that; the unpaid unit is converted into claimed money as per EWURA Regulations which is to be charged for two years only regardless of the period in which the client was under unlawfully access of the service.

DW1 further clarified that, the amount charged includes also the electricity charged per unit plus interest for the whole period under which the client was under illegal access of services. Other charges she added to be, 18 %value added tax (VAT), EWURA1% and 3% REA, of the established amount which in total makes the clients bill per month. And that, finally the client will be availed with the letter notifying him of his due bill for payment. With regard to the complained of bill by the plaintiff, DW1 said, she prepared a spread sheet, (Exhibit DE2) in respect of the plaintiff's account guided by item 8.7.5.1, 8.7.5.2, 8.7.5.3, and item 8.7.6.1 and 8.7.6.2 of exhibit DE1 (TANESCO Distribution Engineering Instruction Manual, 9<sup>th</sup> Edition). She said, the spread sheet refers to the analysis of the revenue loss concerning the plaintiff with meter No. 2094146217 with ID No. 00022018 of Kiwalani within Ilala Municipality. Expounding on the contents of exhibit DE 2, DW1 told the court that, the same shows the trend of the customer's account as from November 2012 up to February 2013 which its total average is 2942.8 units, the next schedule shows the billed units to be 12199 units from November 2013 up to July 2015, whereas the unbilled units are 19,598.80. She further elaborated that; the next column is the value of the calculated units in Tanzanian Shillings, as per the unbilled units which is Tshsh

13,762,724.20 VAT, EWURA and REA, interest exclusive. The next column contains the months in which the client consumed the services without paying and the following column is of the loss and 2% of compounded interest, while another column is for VAT, 18 % which is 3,004,312.35, 1% EWURA Tsh.166,943.12 and 3% REA Tsh.500,829.37. The next column is for the total charges which is 20,367,661.04 and the last schedule shows the monthly use of the client from September 2012 up to July 2015, which was used to calculate the total charges. She said that, the said data was retrieved from the company computer. In concluding, DW1 echoed that, the plaintiff is still their client who is now using a LUKU system, and the debt was transferred into the LUKU account, but they stopped deducting it pending determination of this suit.

When under cross examination by Mr. Kahoho, DW1 said, exhibit DE2 reflects the units from conventional meter and not LUKU meter, and that from 2013 plaintiffs' consumption declined. She further told the court that, if the electricity is bypassed the computers cannot detect rather the technician can do on site. She explained that, they did not detect the decline of consumption by the plaintiff until when physical inspection was conducted.

(DW2) on the other hand testified that, he works with revenue protection Unit section, at Ilala Regional office since 2014. His duties are to attend clients and inspect their LUKU meters, and upon detection of any defect the same is notified to the client by issuing the client with the inspection report after filling the form. In this case he said, on 15/07/2015 in company of his colleagues he inspected plaintiffs' meter which was placed on the electric pole, and noted that, there was external bypass of electricity. He explained external bypass to mean connection of electric wires without passing through meter as it is connected in the house direct from the electric pole. He further testified that, after seeing the two wires connected directly to plaintiffs' machines without passing through the meter, he notified the client of the defect noted and asked him to sign the inspection report. He then issued him with the copy and disconnected the power, before he asked him to consult their office. After that he prepared a report and handed the same to the supervisor of revenue protection Unit for his action. Under cross examination by the plaintiff, this witness said, he is not aware of how many times the said meter was inspected as according to their rules once the defect is noted on the meter such as bypass, it is the client who become liable for such bypass. He tendered the pictures showing the bypass while

under cross examination (Exhibit PE 9 collectively), explaining that, in those picture, the meter is not shown but what is shown is the two wires that were bypassed from the meter. He further testified under cross examination that, for the small industries, the customer's meter inspection is conducted thrice a year. Under re -examination by Ms. Mahatane, DW2 confirmed that, the pictures taken were aimed at showing the wires from the electric line to the client's premises without passing through the meter, so, the pictures could not show the meter itself. This marked the end of defendant's case.

At the end of hearing, parties prayed for the leave to file their final submission, the prayer which was cordially granted; but only the plaintiff complied with the Court's order for filing the final submission. Upon perusal of his submission, it is noted that the plaintiff reproduced the evidence adduced in Court during the hearing and emphasized that, defendant unlawfully disconnected electricity from the plaintiff's business premises. I am therefore not intending to reproduce the said submission in this judgment rather will refer the same in the course of determining the issues.

Having narrated in extensor the evidence of both parties herein, and having gone through the pleadings as well as the final submissions by the plaintiff, I now endeavor to consider the issues as framed by the Court. In so doing,

I shall be guided by the principles governing proof of civil cases as clearly expressed in sections 110(1) and (2), and 111, 112, of the Law of Evidence Act, [Cap. 6 R.E 2019]. It is the law that, he who alleges has the duty to prove the allegations and that the onus of so proving lies on the person who would lose the case if the said fact is not proved. These principles are elaborated in a number of cases. For instance in the case of **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (CAT-unreported) on the said principle the Court of Appeal said:

*"...it is an elementary principle that he who alleges is the one responsible to prove his allegations."*

Similarly in civil proceedings, the party with legal burden of proving the fact also bears the evidential burden of proof and the standard in each case is on a balance of probabilities as provided under section 3(2)(b) of the Evidence Act, [Cap. 6 R.E 2019]. See also the case of **Anthon M. Masanga Vs. Penina (Mama Ngesi) and Another** civil Appeal No 118 of 2014 CAT (unreported) and **Mathias Erasto Manga Vs. M/S Simon Group (T) Limited**, Civil Appeal No. 43 of 2013 (CAT-unreported). In the case of **Mathias Erasto Manga** (supra) the Court of Appeal while discussing on

what amounts to proof on balance of probabilities in civil matter made reference to the case of **Re Minor** (1996) AC 563 where it was held that:

*“The balance of probability standard means a court is satisfied an event occurred if the court considers that, on the evidence the occurrence of the event was more likely than not.”*

With the above understanding, as the claims stand, in this matter it is the plaintiff who owe the burden of proof of his claims on balance of probabilities to the extent that, the alleged meter No. 209414617 was unlawful removed from his custody, that he did not bypass the meter alleged to have been disconnected from service and that the alleged bill of TZS. 20,611,911.00 was unlawfully issued to him hence unlawful disconnection of the power from his business premises by the defendant. It follows therefore that, this court has to decide whether the plaintiff’s burden of proof has been sufficiently discharged by him particularly on the framed issues.

Gleaned from the evidence adduced by both parties, it is not in controversy that, plaintiff’s first meter was removed from the wall of his house and replaced with conventional meter, with meter No. 209414617 which was later on moved and fixed on the high tensile electric pole. It is also not a disputed fact that; plaintiff was paying his bills as exhibited by exhibits P1,

P2, P3 and P7 respectively. What remain in dispute as alluded to above are the issues as to whether the meter No. 209414617 was unlawful removed from his custody and whether, it is the plaintiff who bypassed by the meter and enjoyed the services without paying the bills proportionately to his power consumption hence unlawful disconnection of power by the defendant. And further whether the bill of Tshs. 20,611,911.00 by the defendant to the plaintiff was unlawfully issued.

Starting with the first issue as to whether the meter with meter No. 209414617 was unlawful removed from the custody of the plaintiff, it is my profound view that, this issue need not detain this court. I hold such view as it is apparent from the evidence on record that, PW1 requested for the 3-phased meter from the defendant fitting his business as the first one was single phase. It is also in PW1's testimony that, the old meter was replaced with the 3 phase meter as requested and installed through his contractor before it was moved and fixed to the high tensile electric pole, the evidence which is corroborated by the testimony of PW2. Secondly, after installation of the 3 phased meter there is no any evidence or explanation whatsoever by the plaintiff exhibiting that, the plaintiff had ever complained on its transfer from the house wall to the electric pole, instead he confessed that,



when he came back and looked at the meter, he did not see any problem hence satisfied. As the plaintiff has never reported any concern regarding that shift of meter to the defendant, which was done for safety purposes, then the assertion that, the said meter was unlawful removed from the custody on 20<sup>th</sup> September 2009, I hold remains to be not only unfounded but also unproved hence an afterthought. The first issue is therefore answered in negative.

Next for determination is the second issue as to whether the defendant unlawfully issued the complained of bill to the plaintiff amounting to Tshs. 20,611,911.00 on 23<sup>rd</sup> July, 2015. In his testimony plaintiff asserts that, he was paying his bills and that he is not indebted to the defendant as he never tampered with the meter nor bypassed the power from it, thus the bill of Tshs. 20,611,911.00 is unjustifiable. The assertion was resisted by the defendant on the ground that, that bill or charge arises from unpaid units of electricity used by the plaintiff after he bypassed the two phases from the meter. DW1 tendered exhibit DE2, the analysis of revenue loss resulted from the plaintiff's illegal electricity consumption from September 2012 to July 2015 and explained that, the dropping of electric consumption by the plaintiff is a clear proof of his unlawful act of bypassing the meter. DW1 further

accounted to the court on how she arrived on such claimed figure of Tshs. 20,611,911.00 being guided by item 8.7.5.1, 8.7.5.2, 8.7.5.3, and 8.7.6.1 and 8.7.6.2 of Exhibit DE1 (TANESCO Distribution Engineering Instruction Manual, 9<sup>th</sup> Edition). With due respect, I am in fully subscription with the defendant's proposition and undoubted evidence that, as per exhibit PE9, plaintiff bypassed the meter as a result the defendant suffered loss. Nevertheless, upon close scrutiny of exhibit DE2, suspicion is raised on the formula used to calculate the claimed bill by the defendant as the formula applied therein contradicts DW1's evidence on how the normal consumption average of electricity is calculated so as to come up with unbilled units. According to DW1's testimony, the normal consumption average of electricity by the client is obtained by taking the average of aggregate of consumed electricity for the period of not less than six months before the consumption started getting lower. To the contrary, exhibit DE2 shows that, the average of normal consumption of electricity was obtained from the period of four (4) months only which is November 2013 up to February 2014 instead of up to April 2014 or so. With that misapplication of the formula, I am remained without scintilla of doubt that, the figure obtained by the defendant on the amount chargeable to the plaintiff as loss and/or fine for bypassing the meter

was overstated or overcharged as his average electricity consumption ought to be calculated out of six months of his normal consumption as stated by DW1 and not four months as shown in exhibit DE2. For those reasons therefore, I hesitate not to hold that, though she was entitled to be paid the loss incurred as a result of the plaintiff's illegal act of bypassing the meter, the amount of Tshs. 20,611,911.00 billed to the plaintiff by the defendant was unlawfully obtained for basing on unaccepted formula. Thus the second issue is answered in affirmative.

I now move to the third issue as to whether defendant on 15<sup>th</sup> July, 2015 unlawful disconnected electricity from the plaintiffs milling machines at Kiwalani in Ilala Municipality, Dar es Salaam region. It was the plaintiff's testimony (DW1) that, defendant disconnected electricity without notice but on her side defendant through DW2 proved that, after discovery that the plaintiff had bypassed the meter, he disconnected electricity and the plaintiff signed the filled in form proving the said bypass. This fact was corroborated by PW2 who was in the plaintiff's business premise, confirming that he was given that form to sign and that, he reported that incident to his employer (PW1). Apart from that evidence, the plaintiff was also informed of the alleged bypass by TANESCO via its letters dated 23<sup>rd</sup> July 2015 and 17<sup>th</sup>

November, 2015 (Exhibit P5 and P4) and that, service would be resumed after payment of Tshs. 20,611,911.00, as such act was in contravention of the provisions of section 28 of the Electricity Act. According to that section, once the defect is detected on the meter such as bypass, it is the client who becomes liable for such bypass hence in this matter the plaintiff cannot escape the liability. Further, in justifying the said act of disconnecting electricity, the defendant tendered in Court exhibit DE2 showing plaintiff's account, and how his electricity consumption dropped down abruptly. A glance of an eye on that document proved to me that, plaintiff's consumption dropped in an unexplainable state especially from November 2013 to 2015. It is evident to me that, apart from alleging that from 2013 the production dropped, the plaintiff produced neither documentary evidence to justify his assertion nor did he counter or discredit the evidential value of exhibit DE2 by cross examination. It was held in the case of **Jaspini s/o Daniel @Sizakwe Vs. DPP**, Criminal No. 519 of 2019, (CAT-unreported) that, failure to cross examine on important matters amounts to admission of the opponent party's evidence. The principle though in criminal case, it also apply to civil matters. In that case the Court of Appeal held thus:

*"...it is settled law that failure to cross examine a witness on an important matter implies acceptance of the truth of the witness evidence in that respect..."*

Basing on the principle in the above cited case, I find the assertion by the plaintiff that his production had dropped hence drop in electricity consumption is unjustifiable, since as the party with the onus of proof of that fact, ought to have tendered evidence showing the range of his production before and after the alleged drop up of electricity consumption or cross examine DW1 to discredit the evidential value of exhibit DE2, the duty which he failed to discharge. Even if the plaintiff's version is to be believed which is not the case that, there was drop of production, in my profound opinion, such drop would not be to that large extent or margin as evidenced in Exhibit DE2. Thus, Exhibit DE2 to this Court remains a living testimony that, the plaintiff tampered with the meter or bypassed the alleged two phases of electricity. In the premises, I hold that exhibit DE2 suffices to justify the defendant's act of disconnecting the electricity from the plaintiff's premise, hence the same was lawfully disconnected. It follows therefore that, the third issue is also answered in negative.

Lastly is on the fourth issue as to what reliefs are the parties entitled to. As it is herein above found, the 1<sup>st</sup> and 3<sup>rd</sup> issues have not been proved by the

plaintiff on the balance of probabilities save for the 2<sup>nd</sup> issue. That being the position, this Court finds that the Plaintiff's case against the defendant is partly proved to the extent of the 2<sup>nd</sup> issue only hence the second relief is granted. It is declared that, tax invoice for payment of Tsh. 20,677,983.65 dated 2<sup>nd</sup> December, 2015, issued to the plaintiff by the defendant is null and void for not being realistic. Defendant is at liberty to prepare a fresh tax invoice to the plaintiff based on the accurate and proper formula or calculation in accordance with the existing regulations and guidelines. Otherwise the rests of the prayed reliefs remain unproved and therefore dismissed. Judgment is entered in favour of the plaintiff to the extent explained above.

Each party to bear its own costs.

It is so ordered

DATED at Dar es Salaam this 22<sup>nd</sup> day of July, 2022.



E. E. KAKOLAKI

**JUDGE**

22/07/2022.

The Judgment has been delivered at Dar es Salaam today 22<sup>nd</sup> day of July, 2022 in the presence of the Plaintiff in person, and Mr. Asha Livanga, Court clerk and in the absence of the Defendant.

Right of Appeal explained.

A handwritten signature in blue ink, appearing to be 'E. E. Kakolaki', written in a cursive style.

E. E. KAKOLAKI  
**JUDGE**  
22/07/2022.