

IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

TRIBUNAL APPLICATION NO. 9 OF 2014

IBRAHIM AMANI FUNDI APPLICANT

VERSUS

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITED 1ST RESPONDENT

ENERGY AND WATER UTILITIES

REGULATORY AUTHORITY 2ND RESPONDENT

RULING

The Applicant, Ibrahim Amani Fundi, is by this application seeking extension of time for lodging a notice of appeal out of time against the decision made by the Energy and Water Utilities Regulatory Authority (EWURA), 2nd respondent herein, on 08/08/2014. The application which was filed on 08/09/2014 is made under rules 21 (1) and 26 of the Fair Competition Tribunal Rules 2012 GN No. 219 of 2012 (hereinafter referred to as "FCT Rules") and is supported by an affidavit sworn by the applicant.

According to the applicant's affidavit, the applicant could not promptly lodge the notice of appeal because he had to look for assistance to pursue the appeal since he had no money to hire an advocate. Paragraphs 4, 5 and 6 of the affidavit read as follows:

4. That upon looking an assistance on how and where I should file my appeal as I do not have enough money to hire an advocate to represent me, I was informed that there is a requirement of filing a Notice of Appeal within fourteen days (14) from the day of Award, and that the said fourteen days has already expired.
5. That I am requesting the extension of time to file the Notice of Appeal to this honourable tribunal due to the fact that I failed to act within the prescribed period as I do not have enough money to obtain assistance from Legal Firms since it was difficult even to obtain the amount of money in filing this Chamber Application.
6. That it is in the interest of justice that the prayers sought in the Chamber Summons be granted otherwise the applicant will suffer irreparable loss.

In addition, the applicant through his written submission stated that "his intended Appeal involves some elements of illegalities calling for rectification so as to make the ends of justice meet."

The respondents, Tanzania Electric Supply Company Limited (also known by its acronym "TANESCO") and EWURA have resisted this application.

On his part, the 1st respondent submitted that neither ignorance of the law, poverty nor old age amount to sufficient reason to extend time for filing a notice of appeal. The 1st respondent further submitted that the claim by the applicant that the intended appeal involves some elements of illegalities while at the same time failing to specify the claimed illegality is not convincing for purposes of extending time to file notice of appeal rather seeking the mercy of this Honourable Tribunal, insisted Mr. Juvenalis Ngowi, learned counsel for the 2nd respondent.

On the other part, Mr. Ngowi submitted that the applicant ought to have applied for extension of time to lodge an appeal and not notice of appeal. Reasons advanced by the 2nd respondent being that the limitation period for filing the notice of appeal is not provided in the FCT Rules but in the Energy and Water Utilities

Regulatory Authority Act Cap 414 R.E. 2002 (hereinafter referred to as "the EWURA Act"). The prescribed time for filing a notice of appeal provided under section 36 (2) of the EWURA Act must be complied with and the Tribunal cannot invoke rule 26 of the FCT Rules to extend time to file notice of appeal. Thus, the Tribunal lacks jurisdiction to entertain application for extension of time to file either an appeal or notice of appeal in accordance with rule 9(2) of the FCT Rules. The 2nd respondent further stated that the reason of poverty advanced by the applicant is not acceptable grounds for extension of time. In addition, the 2nd respondent stated that other reasons of old age and illegalities advanced by the applicant through his written submission should be disregarded for being unascertained and unsubstantiated since they were not stated in the affidavit in support of this application.

Before going to the merit of the application, we find it necessary to start with the issue of lack of jurisdiction to extend time within which to file a notice of appeal as raised by the 2nd respondent. The 2nd respondent stated that on the basis of rule 26 read together with rule 9 (2) of the FCT Rules, this Tribunal lacks jurisdiction to extend the time for filing a notice of appeal. Rule 26 reads as follows:

The Tribunal may, on application by a party, extend the time limited by these Rules or by its

decision whether before or after the expiration of that time.

Rule 9(2) reads:

The notice of appeal shall be lodged within the time of appeal prescribed in the respective laws establishing the Commission or Regulatory Body.

Section 36 (2) of the EWURA Act provides as follows:

Where a party is not satisfied with an award to which this section applies may appeal to the Fair Competition Tribunal within 21 days thereafter the award shall be placed on the Public Register.

We do not agree with the argument by the 2nd respondent that this Tribunal has no jurisdiction to extend time for filing a notice of appeal. If we were to hold that this Tribunal has no jurisdiction (as Mr. Ngowi would like us to do so), we will surely create a legal vacuum which will occasion great injustices and violation of the rule of law since there will be misuse, abuse and omissions which will go uncorrected hence resulting into boycotts and other defensive actions in the economy adversely affecting competition and consumer protection.

With all these in mind, we firmly hold that neither the EWURA Act CAP 414 nor the FCT Rules intended to limit the powers of this Tribunal in extending time to file a notice of appeal because such a power is strictly ancillary/incidental to the Tribunal's general jurisdiction of hearing and determining appeals from regulatory bodies and the Fair Competition Commission (FCC). We are of the well considered opinion that it was not the intention of either the parliament or the Tribunal, when formulating the FCT Rules, 2012, to limit this Tribunal in entertaining applications for extension of time to appeal against the decisions of EWURA or any other regulatory body falling under the jurisdiction of the Tribunal.

On the merit of application, we are guided by the decision of the Court of Appeal in **Yusuf Same & Another v. Hadija Yusuf, Civil Appeal no 1 of 2002 (unreported)** which state that;

“an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to sufficient cause has not been defined.”

It is upon the Tribunal to grant order for extension of time on the basis of the case at hand. This Tribunal has dismissed application

for extension of time (see **Martin Mbwana V. Tuktuk Limited and Chief Inspector, Merchandise Marks Act** – Application No. 1/2014 and **Paul Magasha V. MIC Tanzania Limited and TCRA** – Application No. 6/2014) as well as granted the order for extension of time (see **Irfan M. Dinani V. Zantel** – Application No. 9/2008; **TANESCO V. EWURA** – Application No. 3/2011 and **Emirates Airlines v. Irfan M. Dinani and TCAA** – Application No. 5/2012) on different grounds depending on the individual circumstances of the case under consideration. The wide interpretation of what amounts to sufficient cause for purposes of extension of time to file appeals is substantiated by the Court of Appeal in **Felix Tumbo Kisima v. TTCL and Another – CAT Civil Application No. 1 of 1997 (unreported)** which held;

“It should be observed that “sufficient cause” should not be interpreted narrowly but should be given a wide interpretation to encompass *all reasons or causes which are outside the applicant’s power to control or influence resulting in delay in taking any necessary step.*” (Emphasis ours)

It is elementary that ignorance of the law and negligence on the part of the applicant do not amount to sufficient cause for extension of time. In the case of **Alison Xerox Sila v. Tanzania**

Harbours Authority – Misc. Civil reference No. 14 of 1998 (unreported) the Court of Appeal had this to say:

“Lapses, inaction or negligence on the part of the applicant seeking extension of time, does not constitute sufficient cause to warrant extension of time.”

However, looking at the overall circumstances surrounding the case, we find that the delay in filing an appeal against the decision of the 2nd respondent is well justified. We hold so after taking into consideration the applicant’s affidavit evidence that he is a person of limited financial means, a matter which is outside of his control or influence. Moreover, from the applicant’s affidavit evidence it is evident that the applicant was not idle and in fact took steps to secure the involvement of an advocate in the matter only to learn that he was already out of time.

We are satisfied that the applicant has advanced sufficient reasons for extension of time to file notice of appeal as sought.

In the event, and for the reasons stated above, we grant this application for extension of time with no order as to costs.

Notice of appeal should be lodged in this Tribunal by
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It is so ordered.

Judge Z.G. Muruke – Chairman

Mrs. Nakazaeli L. Tenga – Member

Mr. Onesmo M. Kyauke – Member

28/04/2015

Ruling delivered this.....day of April, 2015 in the presence
of.....and Mr. Beda Kyanyari ,Tribunal
Clerk.

Judge Z.G. Muruke – Chairman

Mrs. Nakazaeli L. Tenga – Member

Mr. Onesmo M. Kyauke – Member

28/04/2015