

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

TRIBUNAL APPEAL NO. 1 OF 2012



**TANZANIA ELECTRIC SUPPLY COMPANY LTD
(TANESCO).....APPELLANT/APPLICANT**

VERSUS

NYARONYO MWITA

KICHEERE.....1ST RESPONDENT

ENERGY AND WATER UTILITIES REGULATORY

AUTHORITY (EWURA).....2ND RESPONDENT

01/08/2014

Coram:

Hon. Z. Muroke - J/Chairman

Dr. M.M.P. Bundara - Member

Mr. Gregory Ndanu - Member

Appellant/ 1st Respondent in the Cross Appeal:

TANESCO

For the Appellant/1st Respondent in the Cross Appeal:

Samah Salat

IMMMA Advocates

1st Respondent/ Appellant in the Cross Appeal:

Nyaronyo Mwita Michere

For the 1st Respondent/ Appellant in the Cross Appeal:

Flugence Masawe

Legal & Human Rights Centre

2nd Respondent: EWURA

For the 2nd Respondent: Juvenalis Ngowi

East African Law Chambers

Tribunal Clerk: Beda Kyanyari

RULING

When this matter came up for hearing today, Ms. Salat Samah, learned counsel for the appellant, prayed for an adjournment for the appellant to file list of authorities before hearing.

In response, Mr. Fulgence Massawe, learned counsel for the 1st respondent, though did not object to the prayer for adjournment,

alerted this Tribunal that there are no sufficient reasons advanced by the appellant's counsel for the adjournment. Mr. Massawe further submitted that the notice of hearing was issued one month before the hearing date and therefore learned counsel for the appellant ought to have filed the same three days before the hearing date.

On his part, Mr. Juvenalis Ngowi, learned counsel for the 2nd respondent, asked this Tribunal to allow the prayer and condemn the appellant for not filing list of authorities within time.

In rejoinder, Miss Samah submitted that the delay to file list of authorities was attributed to Eid holiday interference on Tuesday and Wednesday 29th and 30th July, 2014 respectively. Ms Samah conceded to have received notice of hearing one month ago but she was very emphatic that because of the Eid holiday interference she could not file the same.

We have considered the submission made by respective learned counsel in the context of the provisions of rule of 22 of the Fair Competition Tribunal Rules, 2012 (hereinafter referred to as "FCT Rules") and case law. Rule 22 of the FCT Rules provides as follows:

*"Rule 22- A party who intends to rely on the judgment in any reported or unreported case or to quote anything from any book or authority at the hearing of an appeal or application, **shall not less than three days before the hearing of the appeal or application-***

- (a) lodge with the Registrar five copies of the list containing-
 - (i) the full citation of the case; or
 - (ii) in the case of book, the title of the book names of authors and edition of the book or authority;
- (b) attach extracts of the relevant pages of the case, book or authority and
- (c) serve a copy of the list on the other party. (Emphasis ours).

According to the provision of rule 22 of the FCT Rules quoted above, a party who intends to rely upon a judgement in any report or unreported case or to quote anything from any book or authorities at the hearing of an appeal or application is required to lodge with the Registrar five copies of the list of authorities three days before the hearing date.

The words used in rule 22 is **shall not less than three days**. This is a mandatory requirement that must be complied with. Learned counsel ought to have filed list of authorities which she intends to relay upon earlier, and not within 3 days before the hearing.

Our record in the case file clearly shows that both parties were reminded by the Registrar of this Tribunal to file their list of authorities vide a letter with Ref. No. AB.39/92/01/B/117 dated 25th of November, 2013. In order to accelerate disposal of this appeal, parties were also advised to file their skeleton arguments as per rule 28 of the FCT Rules.

Submission by learned counsel for the appellant that she could not file list of authorities she intends to rely on, in arguing this appeal due to Eid holiday not only is in none compliance with rule 22 of the FCT Rules but also demonstrates personal negligence on the part of the learned counsel in handling this matter on behalf of his client, and does not constitute sufficient cause for non-compliance with the mandatory requirement of rule 22 of the FCT Rules. In the case of **William Shija v. Fortunatus Masha 1997 TLR 213** the Court of Appeal held that negligence on the part of the counsel who caused the delay cannot constitute sufficient reason.

Again, the Court of Appeal in the case of **Dr. Ally Shabhay v. Tanga Bohora Jamaat [1997] TLR 305** at page had this to say:

"Those who come to court must not show unnecessary delay in doing so. They must show great diligence"

—We find it necessary to point out at this juncture that this Tribunal was established under the Fair Competition Act, 2003 to hear and determine competition and regulatory appeals **expeditiously for market and economic efficiency. The principal objective of the Tribunal is to expeditiously adjudicate appeals that arise from orders and decisions of the Fair Competition Commission (FCC) and the regulatory authorities in the utilities and infrastructure sectors for enhanced market efficiency and consumer welfare.**

The products and services produced and offered by these sectors **are critically intermediate or direct inputs to other sectors of the economy and are essential to all households. As such, ineffectiveness in these sectors has a direct impact to the real income of the household and cuts across many sectors of the economy.** Moreover, one of the attributes of the vision of the National Trade Policy is to increase competitiveness in our economy. Efficient infrastructure and utilities sectors are one of the important features for competitiveness of the country's economy. This Tribunal **has a vital role to augment this efficiency** through adjudication process at appeal level. Therefore, when discharging its function, this Tribunal **facilitates acceleration of the achievement of goals and objectives of the macroeconomic policies. Hence, the unnecessary delay of cases defeats the very purpose of establishing this Tribunal and therefore should be condemned.**

Having all this in mind, and putting into consideration the circumstances of this particular case, justice demands that an adjournment should be granted and accordingly we grant the same. However, we must hurriedly say that this should be last adjournment. After holding so, learned counsel for the appellant is therefore permitted to file list of authorities as per the mandatory requirement of rule 22 of the FCT Rules.

As regards costs of today's adjournment, the adjournment of today's hearing was caused by personal negligence of the appellant's counsel herself and lack of seriousness in mishandling this matter. Therefore, we are of the strong view that she should be personally responsible for the costs incurred. Accordingly, we order that costs of today's adjournment be borne by the appellant's counsel in person.

Hearing date of this appeal to be fixed by the Registrar and notified to the parties.

It is so ordered.

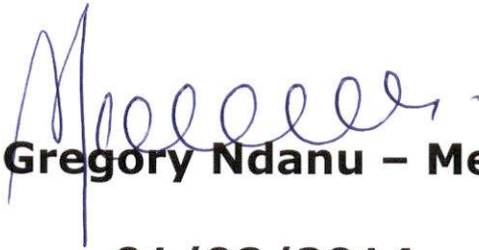
DATED at Dar es Salaam this 1st day of August, 2014



Judge Z. Muruke – Chairman



Dr. M.M.P. Bundara – Member



Mr. Gregory Ndanu – Member

01/08/2014

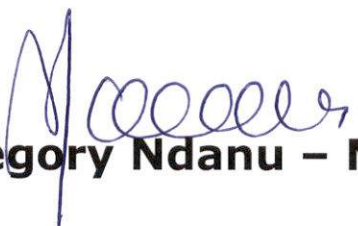
Ruling delivered this 1st day of August, 2014 in the presence of Ms. Samah Salat, learned counsel for the appellant, Mr. Flugence Massawe and Mr. Juvenalis Ngowi, learned counsel for the 1st and 2nd respondents respectively.



Judge Z. Muruke – Chairman



Dr. M.M.P. Bundara – Member



Mr. Gregory Ndanu – Member

01/08/2014