

IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 4 OF 2015



ANDREW P. KIDIKU.....APPLICANT

VERSUS

**TANZANIA ELECTRIC SUPPLY COMPANY LIMITED
(TANESCO).....1ST RESPONDENT**

ENERGY AND WATER UTILITIES REGULATORY

AUTHORITY (EWURA.....2ND RESPONDENT

RULING

On 14th June, 2014, the appellant on behalf of his son Pascal D. Kidiku lodged complaint to the 2nd respondent against 1st respondent claiming the amount of Tshs. 47,311,925.25 being general damages following 1st respondent delay in connecting electricity power to his son's house. 2nd respondent determined the complain ex-parte and awarded Tshs. 70,541.24, after being satisfied that appellant paid connection fees on 7th October, 2011. Being dissatisfied with the award appellant filed current appeal.

After being served 2nd respondent raised preliminary objection namely:

- (i) No appeal lies as the Notice of Appeal was filed out of 21 days contrary to section 36(2) of the Energy and Water Utilities Regulatory Authority Cap.414 R.E 2006.
- (ii) The appeal is time barred for having been filed out of 21 days after filing the notice of appeal contrary to rule 11(1) of the Fair Competition Tribunal Rules 2012.
- (iii) The appeal is incompetent as the supporting memorandum of Appeal is defective for not being substantially in the form D specified in the second Schedule to the Rules contrary to rule 11(4) and for being vague, extremely narrative and containing no grounds of appeal contrary to rule 11(5) of the Fair Competition Tribunal Rules 2012.

On the hearing date of preliminary objection, Mr. Kidiku was in person, 1st respondent was being represented by Diana Mahatane, while 2nd respondent was being represented by Mr. Kabakama James. Tribunal requested 2nd respondent's counsel to address the the 2nd Preliminary Objection.

Mr. James Kabakama submitted briefly that the Notice of Appeal was filed on 23/06/2015. The Appeal was filed on 03/08/2015.

It is a period of 41 days. Rule 11(1) of FCT Rules provides for 21 days within which to file appeal from the date of filing of Notice of Appeal. 2nd respondent's counsel insisted that, appeal is out of time for more than 20 days. He thus, prayed that the same to be dismissed with costs.

Mr. Andrew P. Kidiku, the appellant herein, out rightly admitted 2nd preliminary objection, and said, we quote:-

"It is true that my appeal is out of time but it is because I had no fund to pay for filing fees. I did not intend to delay. It is after having availed documents indicating Tribunal filing fees structure I realized that, I had no enough money to pay for filing fees. So, I had to look for fund to pay for filing fees. It is my first time to file an appeal before the Tribunal".

From the above words Mr. Kidiku prayed for the Tribunal to consider his position and hear his appeal on merits. In rejoinder Mr. James Kabakama, submitted that, the Rules requiring filing of appeal within 21 days from the date of filing Notice is Mandatory and therefore they have to be complied with. There is no way the Tribunal can do away without considering rules of this Tribunal.

We have given due consideration of both respondent's counsel submission and Mr. Andrew P. Kidiku, the appellant. It is a

matter of procedure that in terms of Rule 11(1) of Fair Competition Tribunal Rules, any appeal or cross-appeal shall be constituted within twenty one days of the date when the notice of appeal or cross-appeal was lodged. The said rule read as follows:

11(1) Any appeal or cross-appeal shall be constituted within twenty one days of the date when the notice of appeal or cross-appeal was lodged”.

From the records of appeal, the notice was lodged on 23rd June, 2015 vide FCT official receipt No. 1462 for the amount of Tshs. 30,000. The Appeal filed on 03rd August, 2015 vide FCT official receipt no. 1485 for the amount of Tshs. 250,000. As correctly submitted by the 2nd respondent's counsel, Mr. Kabakama and admitted by Mr. Kidiku himself, the appeal is out of time. From 23rd June, 2015 to 03rd August, 2015 it is a period of 41 days. Time provided by Rule 11(1) of FCT Rules 2012 is 21 days. Thus, the appeal is out of time for more than 21 days. Mr. Kidiku has requested this Tribunal to do away with preliminary objection, because he had no money to pay for filing fees and more so, he did not intend, bearing in mind it is his first time to file appeal before his Tribunal.

With due respect to Mr. Kidiku's submission, Rules of Fair Competition Tribunal are Rules of procedures, that need to be applied stringently, because they go to the roots of any matter filed. The said Rules are the tools of handling appeals,

applications, Reviews and any matter filed before this Tribunal. In this particular case, Rule 11(1) of FCT Rules 2012, set time within which one can file appeal after Notice having been filed. Mr. Kidiku's submission that, he was looking for filing fees, would have been an issue to be discussed, if applicant had requested for extension of time before filing the present appeal. Sufficient cause would be shown for delay in not taking the necessary steps in instituting this appeal, in terms of Rule 26 of FCT Rules 2012 which provide as hereunder:-

"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".

The Tribunal has considerable discretionary powers to grant the extension. In the case of *Blue line Enterprises Ltd vs East African Development Bank Misc Civil Cause No. 13/1995* (unreported) Katiti J, as he then was held that:

"It is trite law that extension of time must be for sufficient cause, and that extension of time cannot be claimed as of right, that the power to grant this concision is discretionary, which is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by court."

As observed above, Court, and for this matter, Tribunal can grant extension of time upon sufficient cause, being shown by the

applicant. The question to be asked further by this Tribunal is whether extension can be dealt with in the cause of appeal and more so, after Notice of Preliminary Objection has been raised by 2nd respondent. The answer is obvious found in rule 26 of the FCT Rules (supra):-

That, Tribunal may on application by a party extend the time limited by these Rules or by its own decision whether before or after the expiration of that time.

What is before us is appeal filed beyond time prescribed by rule 11(1) of FCT Rules 2012. That, appellant to file appeal within 21 days are rules of procedure that need to be applied stringently. They go to the root of the essence of appeal. Time within which to file appeal or application in this Tribunal is of essence, without limitation of time, we will have endless litigations at the whims of the parties, and more seriously, it will be against rationale behind establishing this Tribunal.

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**

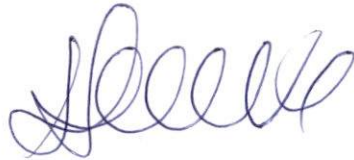
and infrastructure sectors for enhanced market efficiency and consumer welfare.

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 these in mind, we find it difficult to agree with Mr. Kidiku, the appellant. Accordingly we uphold 2nd preliminary objection, and dismiss the appeal for having been filed out of time. Having done so, there is no need of discussing other

preliminary objection, because there is nothing left for further determination. Normally, costs follow the event, however, in the circumstances of this matter, each party to bear its own costs.

It is so ordered.



Judge Z.G. Muruke – Chairman

Hon. Salma Maghimbi – Member



Dr. Onesmo M. Kyauke – Member

18/12/2015

Ruling delivered this 18th day of December, 2015 in the presence of the appellant in person and Diana Mahatane for the 1st respondent and Mr. James Kabakama for the 2nd respondent.



Judge Z.G. Muruke – Chairman



Hon. Salma Maghimbi – Member



Dr. Onesmo M. Kyauke – Member

18/12/2015