

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

TRIBUNAL APPEAL NO. 23 OF 2018



MOHAMED NGAUNJE WENYAAPPELLANT

VERSUS

TANZANIA ELECTRICITY SUPPLY LIMIED

(TANESCO)1ST RESPONDENT

ENERGY AND WATER UTILITIES

REGULATORY AUTHORITY (EWURA)2ND RESPONDENT

(Arising from the decision of the Energy and Water Utilities Regulatory Authority (EWURA) dated 31st October, 2017 in complaint No. EWURA/33/1/385/or GA.71/135/45)

JUDGEMENT.

The appellant, MOHAMED NGAUNJE WENYA, aggrieved with the award of the 2nd respondent hereinabove in Award/33/1/385 or GA. 71/135/45 dated 31st October, 2017 appeals to this honourable Tribunal armed with eight grounds of appeal faulting the Authority findings couched in the following language, namely:-

1. That, 2nd respondent erred in law and fact in holding that the affected house with fire was not connected with power by the respondent without sufficient evidence.
2. That 2nd respondent erred in law and fact in deciding in favour of the 1st respondent while there was sufficient evidence that the fire outbreak caused burnt of the appellant's house was due to the negligence of the 1st respondent.
3. That, 2nd respondent erred in law and fact in holding that the appellant failed to prove his claim on a balance of probability while it was to the contrary.
4. That, 2nd respondent erred in law and fact in deciding that the 1st respondent is not responsible for the loss sustained by the appellant while there was sufficient evidence to prove the same.
5. That, 2nd respondent erred in law and fact in dismissing the appellant's case without justification.
6. That, 2nd respondent erred in law and fact in deciding in favour of the 1st respondent relying on the investigation conducted by the 1st respondent who is suspected to be

responsible for the fire that gutted down the appellant's house.

7. That, 2nd respondent erred in law and fact in deciding in favour of the 1st respondent while the 1st respondent in toto failed to bring the sketch map and drawing of the appellant's house connected with power.

8. That, 2nd respondent erred in law and fact in deciding the matter in favour of the 1st respondent on ground the appellant house gutted with fire was illegally connected by the appellant while to date there is no legal action take by the 1st respondent to justify the same.

The facts of this appeal are that on 17th day of September, 2015 the appellant's house situated in plot no. 248 Block "Z" Wailes-Angola street in Lindi Municipality was gutted down by fire as result of frequent power interruptions at his location. The fact goes further that the power on that material day was coming on and off thus, causing an electrical fault which resulted into a fire outbreak that gutted down the entire house and household items. The incidence was reported and parties could not reach amicable

solution and the matter was reported to the second respondent who adjudicated the dispute and eventually decided in favour of the first respondent. The appellant dissatisfied with the award of the 2nd respondent has come to this Tribunal, hence this appeal.

When this appeal was called for hearing, the appellant was enjoying the legal services of Mr. Frank Ntuta, learned advocate. On the other adversary part, the first respondent was represented by Miss. Wemael Msuya, learned advocate and the second respondent had the legal services of Miss. Hawa Lweno, learned advocate. Both side of the dispute were ready for hearing.

Mr. Ntuta told the Tribunal that generally, looking at the evidence on record this Tribunal has two big issues to answer in determining this appeal. One, is whether the 1st respondent is not responsible for the cause of the fire that gutted down the appellant's house and the second is whether the 1st respondent is not responsible to compensate the loss suffered by the appellant's gutted house. Mr. Ntuta prayed before this Tribunal adopt his skeleton arguments and list of authorities to be part of his submissions in support of this appeal.

Submitting on ground number one, Mr. Ntuta was of the firm submission that, the first respondent's failed to bring drawings showing which house was connected with the electricity and failure by the 2nd respondent to see that it is the same house that was shown in the installation card was an error which occasioned failure to justice.

As to the second ground of Appeal, it was the brief submission of Mr. Ntuta that there was no dispute that the appellant and the 1st respondent has no contract at all.

And on the third ground of appeal, Mr. Ntuta submitted that the change of metre in the absence of the appellant and without notice shows that the first respondent wanted to hide the truth on this matter.

As to the fourth ground of appeal, it was the strong submission of Mr. Ntuta that no action was taken against the appellant for connecting himself with electricity without authority, hence an indication and conclusion that no such unlawful connection was done nor proved by the 1st respondent.

In respect of the fifth ground of appeal, it was the submission of Mr. Ntuta that the investigations that was the basis of the claim were carried out by the 1st respondent which is against the rules of natural justice, that is, one cannot be a judge of his own case.

In conclusion, Mr. Ntuta told this Tribunal that this ground covers and answers the second issue, which in its totality, is on compensating same is answered in the affirmative. In the final analysis, he invited this Tribunal to allow this appeal with costs and other order that the Tribunal may deem fit to grant.

Ms. Msuya, learned counsel for 1st respondent, replied that the installation card and agreement card were showing the house (the small house) which the 1st respondent installed electricity. The number of things it contained were 5 lamps, 2 switch socket which when they visited the house, all were found intact.

According to Ms. Msuya, the house which was gutted down by fire had 8 bulbs, 5 switch sockets and these were in the main house that was gutted down by the time and is different from the small house which the 1st respondent made electricity connection. Ms.

Msuya submitted that there was ample evidence that TANESCO installed electricity to the small house and is not disputed as CW2 who was a technician testified that the connection was for the first small house, and upon inspection everything in that house was intact. Furthermore, at page 23 of the typed proceedings of 11/7/2017 there is evidence that the electricity was unlawful connected from the small house to the main house as the appellant has never applied for connection of electricity for the main house. According to Ms. Msuya, the appellant has failed to prove which house was connected as with the new house there would be a new service line and that it is possible to have two lines services in one plot.

It was the reply of Ms. Msuya that the change of meter, was done while Tanesco was in the roll out changing of metres and they did that to the small house and not the main house. The small house has electricity and the appellant's family is using it to date. Moreover, it was the strong submission of Ms. Msuya that the change of meter did not affect anything because it has nothing to do with the gutted down house and that during trial the issue of

meter was not among the issue for determination but has been raised in this appeal as an afterthought on the part of the appellant.

As to failure to charge the appellant, it was the reply of Ms. Msuya that failure to charge cannot legalize his illegal acts of connecting electricity unprocedurally and the loss he has suffered, Tanesco thought was enough for his fault.

On complaint of investigations, the reply of Ms. Msuya was that, the 1st respondent was entitled to conduct her own investigations because she wanted to establish what was the cause of the fire and it was the very report which revealed that the fire started inside the house not with electricity connected by TANESCO. The investigations were carried out as part of her lawful duty and to assist the Authority to reach a fair decision. If the appellant wanted to make his own independent investigations, he could have done it and bring a report to the adjudicating authority as well.

Ms. Msuya concluded by submitting that it was in the totality of the reasons stated above, that the 1st respondent is not responsible to

what befallen the appellant. According to Ms. Msuya, the appellant was the author of his own fate and no compensation can be granted where no proof that TANESCO was the causative of the problem. In the final analysis, she asked this Tribunal to dismiss this appeal with costs.

The 2nd respondent by Ms. Lweno replied that during trial the issue of sketch map was not among the issues to be determine by the 2nd respondent. The issues were framed at page 3 of the typed proceedings. The issue that was to be proved was the lawful connection on the two houses in the disputed plot. According to Ms. Lweno, page 10 of the award shows clearly the house that had lawful connections was the small house and the one gutted down was not. Ms. Lweno submitted that there is ample evidence that the connections to the gutted down house was unlawful and the appellant has himself to blame.

The reply by counsel for 2nd respondent as to the change of meter, was brief that it was not among the issues for determination in this case at the trial. Equally as to the complaint on investigations, Ms. Lweno replied that each party to the dispute had a legal duty to

bring evidence to assist the Authority to make a fair decision and the appellant was not prevented from bringing such evidence of his own investigation. Further reply was that the report he now complains about was tendered by both sides and it is untold now the appellant wants to turn and disown it.

As to the complaint of the appellant, that since he was not sued by TANESCO, if truly he unlawfully connected electricity, then an inference was to be drawn that the allegations of unlawful connection were false. The 2nd Respondent's counsel reply was that it has nothing to do with her so long as there was ample evidence of unlawful connections.

As to the issue of loss, it was the reply of Ms. Lweno that there was no evidence to warrant the grant of the compensation and as such the denial was lawful. The counsel for 2nd respondent cited the case of **K.J. BUILDERS V. PERMANENT SECRETARY MINISTRY OF CONSTITUTIONS AND JUSTICE AFFAIRS, COMMERCIAL CASE NO. 74 OF 2014** at page 22 it was held that every allegation has to be proved albeit on balance of probability.

According to the counsel for the 2nd respondent, the appellant failed to prove his claims. In the circumstances, she prayed that this appeal be dismissed with costs.

In rejoinder, Mr. Ntuta rejoined that they stick to their guns that the contract card shows there was only one house on the plot. According to Mr. Ntuta, the conduct of the 1st respondent on this matter was meant to hide her evils by changing meter to cover her evils. Mr. Ntuta complained that the 2nd respondent was duty bound to have several issues to cover the entire dispute. Installation card, according to Mr. Ntuta, was clear but was not addressed as such occasioned failure of justice in the circumstances of this case.

Conclusively, Mr. Ntuta humbly prayed that this appeal be allowed with costs.

The task of this Tribunal now is to determined the merits or otherwise of this appeal. This Tribunal have traversed the entire trial proceedings, the award, the memorandum of appeal, the skeleton arguments and the oral submissions for and against this

appeal and eventually find that there is notorious fact not in dispute in this appeal. **One**, there is no dispute that one of the houses standing on plot no. 248 Block "Z" Wailes -Angola street Lindi Municipality the property of the appellant was gutted down by fire because of the electrical short.

In order to do justice, this Tribunal will answer each ground raised and argued based on evidence on record. The first complaint of the appellant in the memorandum of appeal in this appeal is that the 2nd respondent erred in law and fact in holding that the affected house with fire was not connected with power by the 1st respondent without sufficient evidence. To prove his case the appellant testified as CW1 and at page 34 of the proceedings testified that in the disputed plot there is only one house. But at page 35 when further pressed by questions CW1 told the Authority that there are two houses and in this he had this to say:-

" the meter was installed at the smaller house but the drawings were done for the whole house. The power was connected through the smaller house."

At page 43 of the record CW2 told the Authority that he was a technician and that he was involved in the construction of the main house and he had this to say:-

“not the smaller house just the main house. Power was pulled from the smaller house”

This piece of evidence shows that in Plot no 248 Block 'Z' Wailes - Angola street there are two houses. And there is no dispute that connections were done at the smaller house. Equally important, the house that was gutted down was the main house. The 1st respondent denied to have any connection to the main house and that the electricity to the main house was connected illegally. This Tribunal after full consideration of the evidence on record and what happened is of the considered opinion that the complaint in ground number one is unmerited in the circumstances. The reasons for taking this stance are that of the two houses, one expects them to have two meters and service lines. In the absence of such evidence from the appellant and the fact that the main house was illegally connected from the smaller house bring to rational conclusion that the appellant's own infrastructures made illegally

were the causative of the problem in question. Therefore, this Tribunal agrees with the findings of the 2nd respondent that the 1st respondent is not responsible for the fire and as such this ground fail miserably in the circumstances and readily answer issue number one that the 1st respondent is not responsible for the cause of the fire that gutted down the appellant's house. The evidence, both oral and documentary, offered by the first respondent was strong and was not shaken by the appellant's testimony. The holding in this issue cover grounds number 2, 3, 4, 5 and 6, which basically revolve on whether the 1st respondent is responsible for the fire that gutted the appellant's house. Equally, ground number 8 and argument that since the appellant was not sued cannot be reason to justify that the 1st respondent is responsible for the fire.

Based on the above holding in respect of the 1st respondent's responsibility which is answered in the negative, then automatically the second issue of compensation dies a natural death, in the circumstances. However, the counsel yet raised and argued that the trial Authority erred to rely on the investigation

conducted by the 1st respondent who is suspected to be responsible for the fire that gutted the appellant's house. According to the counsel for the appellant, the report amounted the 1st respondent being a judge of his own case and was against the rules of natural justice. The respondents counsel argued in rebuttal that each party was given chance to prove his case and the 1st respondent investigated and gave the report in building her case and they went further to argue that nothing prevented the appellant from bringing his own independent report. This point won't detain this Tribunal much. TANESCO was not the decision maker to be a judge of his won case. TANESCO was justified in the circumstances to make an investigation and use the report to defend his case as he did. Indeed, the appellant would have used private investigator to make his own report to counter the TANESCO report. On that note, this ground has to fail as well.

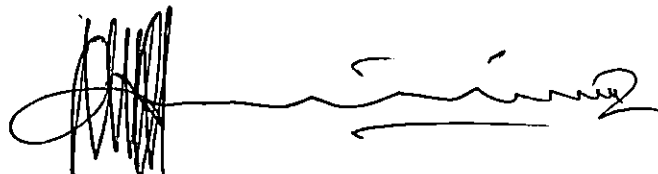
The last point of complaint was that the 2nd respondent erred in law and fact in deciding in favour of the first respondent while the 1st respondent in toto failed to bring the sketch map and drawing of the appellant house connected with fire. This ground will not

detain this Tribunal much as well. The issue of sketch map and drawing, if any, could make sense if the appellant had asked the same to be brought during hearing and as rightly argued by the learned counsel for the 2nd Respondent, the same was not among the issues framed and agreed but is coming now in this appeal. The appellant was duty bound to prove that he had different drawings and sketch or if he wanted the 1st respondent to bring the map and the sketch, he ought to follow the legal procedures of having them tendered. This was not done. In the absence of evidence on record praying for them during trial, makes it of no merits to require them now.

That said and done the appeal is akin to fail and is hereby dismissed with costs for want of merits in its entirety.

It is so ordered.

Dated at Dar es Salaam this 24th day of May, 2019.

A handwritten signature in black ink, appearing to read 'Stephen M. Magoiga', written over a horizontal line.

Hon. Stephen M. Magoiga – Chairman



Hon. Butamo K. Phillip – Member



Dr. Theodora Mwenegoha – Member

24/5/2019

Judgment delivered in open chamber in Dar es Salaam this 24th day of May, 2019 in the presence of Advocate Wemael Msuya holding brief for Advocate Ntuta for the Appellant and Ms. Hawa Lweno for the 2nd Respondent and herself for the 1st Respondent.



Hon. Stephen M. Magoiga - Chairman



Hon. Butamo K. Phillip – Member



Dr. Theodora Mwenegoha – Member

24/5/2019