

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



TRIBUNAL APPEAL NO. 18 OF 2018

**JOSHUA KAIZA NDOSSI REPRESENTED BY MRS.
ELIAMANI NDOSSI.....APPELLANT**

VERSUS

TANZANIA ELECTRIC SUPPLY CO.

LIMITED (TANESCO).....1ST RESPONDENT

ENERGY AND WATER UTILITIES REGULATORY

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

RULING

The appellant herein being aggrieved by the decision made by the 2nd respondent in a complaint lodged by the appellant vide Complaint-Docket No. QP.71/135/07, filed the appeal at hand on 3rd of September, 2018. As usual this appeal was preceded by the Notice of Appeal that was filed in this Tribunal on 13th of August, 2019. This ruling is in respect of the propriety of the Notice of Appeal aforesaid and the competency of the appeal.

The learned advocates Flora Jacob and Adolf Laurent Temba appeared for the appellant while the Principal State Attorney Mr.

Karonda Said Kibamba and the learned Advocate Edwin Kidifu appeared for the 1st and 2nd respondent respectively.

When this appeal was called for hearing the Tribunal *suo motto* raised a concern on the propriety of the Notice of Appeal, that is, whether it was filed in time as required by the laws and whether the appeal was competent before this Tribunal. The Tribunal's concern was to the effect that since the Notice of Appeal was filed on 13th August, 2018 and it indicates that the decision intended to be appealed against was given on 28th June, 2018 then, the Notice of Appeal was filed out of time, that is more than twenty one days (21) from the date of the decision, contrary to Rule 9(1)(2) of the Fair Competition Tribunal Rules, 2012 which provides as follows:

"9(1) A person who intends to appeal to the Tribunal shall lodge with the Tribunal a notice of appeal in five copies for the use of the Tribunal and for each party in the appeal.

(2) The notice of appeal shall be lodged within time of appeal prescribed in the respective laws establishing the commission or Regulatory Body".

(emphasis is ours)

In this matter, the Regulatory Authority at issue is Energy and Water Utilities Regulatory Authority ("EWURA"). Rule 22 of the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2012 provides that any party aggrieved by the decision of the Authority can appeal to the Fair Competition Tribunal within twenty one days from the

delivery of the decision. It follows therefore that the Notice of Appeal was supposed to be lodged within twenty one days from 28th of June, 2018 which as per the Notice of Appeal lodged in this Tribunal is the date on which the decision intended to be appealed against was given.

Responding to the aforesaid concern raised by the Tribunal, Ms. Jacob submitted that the Notice of Appeal was filed on 13th August, 2018 and the decision intended to be appealed against was delivered on 27th July, 2018, thus, she contended that the notice of appeal was filed within twenty one days from the date of the decision. She conceded that the Notice of Appeal indicates that the decision intended to be appealed against was given on 28th June, 2018 and further submitted that the Notice of Appeal was accompanied by a letter dated 9th August, 2018 showing that the decision intended to be appealed against was delivered to the parties on 27th July, 2018. Ms. Jacob argued that the aforesaid letter was attached to the Notice of Appeal purposely to show that the decision intended to be appealed against was delivered on 27th July, 2018. Furthermore, Ms. Jacob submitted that the Notice of Appeal is supposed to be in a standard format provided in the 2nd schedule to the Fair Competition Tribunal Rules, 2012 (henceforth "the Rules") 'FCT Form A', which does not provide for a room to insert the date on which the decision was delivered. She contended that the FCT form 'A' gives a space to insert the date on which the decision was given. She was of a view that the date on which the decision was given is the date on which it was prepared and signed by the Chairman

of the Authority, which is 28th June, 2018 and it is the one indicated in the Notice of Appeal at issue.

On his part, Mr. Temba subscribe to the submissions made by Ms. Jacob and proceeded to submit that there is a confusion on the dates in the Notice of Appeal which has been caused by the fact that this matter was heard in Arusha and the decision was delivery in Dodoma. He contended that the issue on the date of delivered of the decision goes to the root of the matter as it touches one of the grounds of appeal in which the appellant is questioning the 2nd respondent's act of delivering the decision in Dodoma instead of Arusha where the matter was heard.

Mr. Kibamba's response to the submissions made by the appellant's advocate was to the effect that the Notice of appeal in incompetent since it indicates that the decision intended to be appealed against was given on 28th June, 2018 and the same was lodged at the Tribunal on 13th August, 2018 that is more than twenty one days from the date the decision was given to the parties. Mr. Kibamba further submitted that the notice does not indicate that the decision intended to be appealed against was delivered on 27th July, 2018. He contended that a Notice of Appeal stands on its own. The rules do not provide for a room to annex any document to the Notice of appeal. The alleged confusion on the date of delivery of the decision in Dodoma cannot justify the defects on the date indicated in the Notice of Appeal, contended Mr. Kibamba. He concluded his submission by inviting this Tribunal to strike out the appeal for being incompetent as the Notice of Appeal was filed out of time.

Mr. Kidifu, concurred to the submission made by Mr. Kibamba. He prayed this appeal to be struck out on the ground that the Notice of Appeal was filed out of time since it indicates that the decision intended to be appealed against was given on 28th June, 2018 and the Notice of Appeal was lodged on 13th August, 2018, that is more than twenty one days from the date the decision was delivered to the parties. As regards the letter that was attached to the Notice of Appeal, Mr. Kidifu argued that the Notice of Appeal cannot be read together with that letter, since the same is not part of the Notice of Appeal. A notice of Appeal is an independent document which is in a prescribed form as per the Fair Competition Tribunal Rules, 2012, contended Mr. Kidifu. In addition to the above, Mr. Kidifu contended that even if for the sake of argument one decides to rely on the letter attached to the Notice of Appeal, the same does not solve the issue at hand since it indicates that the decision was delivered on 27th July, 2018 only and does not make any reference to the date indicated in the Notice of Appeal that is 28th June, 2018, so as to harmonize the two documents.

In rejoinder, Ms. Jacob insisted that the Notice of Appeal was filed in time. The decision intended to be appealed against was given on 28th June, 2018 and delivered on 27th July, 2018. She was of the view that there is a difference between the date the decision was given and the date the decision was delivered. She insisted that the prescribed form 'FCT form A' requires to indicate the date the decision was given, that is the date when the authority finished composing the decision and signed it. She

further contended that the date of delivery is the date when the decision was read over and pronounced before the parties.

Having analysed the submissions made by the learned advocates and the Principal State Attorney, we have noted that both sides are in agreement of the laws applicable when one intends to appeal against the decision of the authority. It is not in dispute that an appeal to the Tribunal must be preceded by filing notice of appeal against the decision of the authority thus initiated by lodging a Notice of Appeal and the same has to be lodged within twenty one days from the date of the decision. The appellants' advocate is not disputing that the Notice of Appeal lodged at the Tribunal indicates that the decision intended to be appealed against was given on 28th June, 2018.

From the foregoing, it is our considered view the issue for determination here is whether the Notice of Appeal has to be read together with the letter that was attached thereto, showing that the decision was delivered on 27th July, 2018. As correctly submitted by all advocates, the Notice of Appeal is in a prescribed form found in the second schedule to the Rules. Having read the Rules, we are of the view that the Rules do not indicate or suggest in any way that the prescribed form for the Notice of Appeal may be accompanied with any document. In fact, the prescribed form for the Notice of Appeal is self-explanatory simple and complete in its content. It is the holding of this Tribunal that the Notice of Appeal is not supposed to be read with any attached document or accompanied by any

document which in effect intends to change or modify its contents.

It has to be noted that a party is only required to fill in the information stipulated therein. The information required are basically, about the decision intended to be appealed against. The prescribed form for the Notice of Appeal requires a party to fill in the date on which the decision intended to be appealed against was given. It is our settled legal interpretation that the meaning of the word "**given**" as used in the Notice of Appeal means the date when the decision was delivered to the parties. That is pronounced and made known to the parties. The logic behind our interpretation is simple, that is, a party cannot lodge a Notice of Appeal for a decision which has not been delivered unto him/her. How can he/she know about it. Therefore, definitely, the Notice of Appeal requires the appellant to indicate the date when he/she became aware of the decision of the Authority. The date the decision was given unto him or her.

We have dispassionately analysed the arguments raised by appellant's advocate that there was a confusion on the date of delivery of the decision intended to be appealed against which necessitated the writing of the letter that has been attached to the Notice of appeal. However, upon close scrutiny of these two documents, we have noted that the letter was written on 9th August, 2018 and copy thereof was served to this Tribunal on 10th August, 2018, which the Notice of Appeal shows that it was signed by the appellant's advocate on 10th August, 2018 and was lodged in this Tribunal on 13th August, 2018. This means that

by the time the appellant's advocate was lodging the Notice of Appeal to the Tribunal, he was aware that the decision intended to be appealed against was delivered on 27th July, 2018. Now, an obvious question here is, why didn't he indicate the correct date of delivery of the decision in the Notice of Appeal? The answer to this question is either he was negligent in the preparation of the Notice of Appeal or he was ignorant of the correct way of filing the prescribed form for the Notice of Appeal. The second possible answer is in line with the arguments raised by Ms. Jacob, that to her understanding the prescribed form for the Notice of Appeal requires the party to fill in the date the decision was given, not the date it was delivered/pronounced. We find that the appellant's advocate failed to properly understand the prescribed form for the Notice of Appeal. The position of the law is clear that ignorance of the law or negligence on part of the advocate handling a matter has never being an excuse for any contravention of the law. [**see the case of Umoja Garage V. National Bank of Commerce (1997) TLR 109**].

In addition to the above as correctly submitted by Mr. Kidiffu, the letter that the appellant's advocate wants to rely on does not refer to the date indicated in the Notice of Appeal leave alone the Notice of Appeal itself. Under the circumstances, that letter cannot be used to rescue the Notice of Appeal filed by the appellant.

From the foregoing, it is the finding of this Tribunal that the Notice of Appeal was filed out of time in contravention of Rule

9(1)(2) of the Fair Competition Tribunal Rules, 2012 and this renders the appeal before this Tribunal incompetent since an appeal to this Tribunal is initiated by lodging a Notice of Appeal within the time stipulated in the laws as elaborated herein above, thus failure to lodge the Notice of Appeal in time is fatal.

In the upshot this appeal is struck out and we give no order as to costs since the appeal has been struck out on point raised by the Tribunal *suo motto*. It is so ordered.

Dated at Dar es Salaam this 17th day of December, 2019.



Hon. Judge Stephen M. Magoiga – Chairman



Hon. Butamo K. Phillip – Member



Hon. Susan Mkapa – Member

Ruling delivered this 13th day of December, 2019 in the presence of Mr. Adolf Temba Advocate for the Appellant, also holding brief for Mr. Kibamba Advocate for the 1st Respondent and Ms. Hawa Lweno Advocate for the 2nd Respondent.



Renatus I. Rutatinisibwa

REGISTRAR