

IN THE FAIR COMPETITION TRIBUNAL



AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 22 OF 2020

PUDENSIANA MWILIKOAPPELLANT

VERSUS

TANZANIA ELECTRIC SUPPLY

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

THE ENERGY AND WATER UTILITIES

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

JUDGMENT

The appellant, PUDENSIANA MWILIKO being aggrieved by the decision of the 2nd respondent in complaint No. GA 71/135/331 dated 29/09/2020 preferred this appeal against the above named respondent's decision on the following grounds of appeal, namely:

1. That the Regulatory Authority erred in law and in fact for holding that the appellant's complaint was time barred to file her complaint without considering the fact that she was always active in following up her matter and that she was misled by respondent that the matter could be settled;

2. That the Regulatory Authority erred in law and fact for holding that the appellant was time barred to file her complaint without considering the fact that the said authority had once determined the same matter and decided to readmit the complaint hence they are stopped to raise the issue of time;
3. That the Regulatory Authority erred in law and in fact for holding that the appellant's complaint is not one empowered to extend time without hearing the appellant on that matter and without considering the appellant could explain reasons for extension of time if she was given chance to be heard;

On the strength of the above grounds of appeal, the appellant prayed that this Tribunal be pleased to allow the appeal by holding that the appellant's complaint was within time and that the appellant has reasonable grounds to file the complaint in the date she filed to the Tribunal.

Upon being served with the memorandum of appeal, both respondents filed reply to memorandum of appeal resisting the grounds as baseless and invited this Tribunal to dismiss the appeal with costs.

The facts pertaining to this appeal are that, on 5th August, 2016 the appellant's residential house on plot No. 114 Block 'D' Ilazo south in the city of Dodoma together with households, furniture and fittings were all gutted down by fire due to an electrical fault

originating from the 1st respondent electrical distribution infrastructure. The appellant estimated value of the properties stood at the tune of TShs. 140,000,000.00.

Further facts were that on 9th August, 2016 the appellant reported the incident to the 1st respondent's Zonal Office for compensation in vain. Thereafter went to the office of the District Commissioner, then, Regional Commissioner and finally to the Ministry of Energy whereby it was resolved in November, 2019 that the complaint should be filed to 2nd respondent for determination.

Following that resolution on 6th December, 2019, the appellant filed a complaint with the 2nd respondent seeking compensation of TShs. 140,000,000.00 for damaged house and its households.

Facts went on that upon being served, the 1st respondent filed a reply to the complaint and simultaneously raised objection on point of law to the effect that the complaint is time barred. The 2nd respondent upon hearing the preliminary objection sustained the same and dismissed the complaint. Undaunted, the appellant has approached this Tribunal by way of appeal, hence, this judgment in appeal.

When this appeal was called on for hearing, the appellant was being advocated by Mr. Isack Lupi, learned advocate. On the other hand, the 1st respondent, despite being served with the notice of hearing, did not enter appearance necessitating the prayer for ex-

parte proof to be granted against her. The 2nd respondent was being advocated by Ms. Hawa Lweno learned State Attorney.

Arguing the first ground of appeal, Mr. Lupi started by narrating the history of the dispute and the follow ups by the appellant since 2016 to when she was lastly well advised and managed to file a complaint before the 2nd respondent. According to Mr. Lupi, when the 2nd respondent admitted its complaint which was out of time, that amount to extension made and the 2nd respondent should be stopped from denying this fact because she made the appellant to believe so.

On the second ground of appeal, Mr. Lupi was brief to the point that since the conduct or act of the 2nd respondent admitting the complaint amounts to extension so no way they can deny them now and should be stopped to deny that fact.

On the third ground of appeal, it was the submission of Mr. Lupi that, the 2nd respondent had powers to extend time and their failure to extend was wrong and that cannot affect the appellant.

Ms. Lweno, learned State Attorney for the 2nd respondent in opposing this appeal, prayed to adopt their skeleton written arguments filed in the Tribunal. In the skeleton arguments, Ms. Lweno argued that, according to Rule 25(1) read together with second column of the Fifth Schedule to the Energy and Water Utilities Regulatory Authority (Consumer Complaint Handling

Procedure) Rules, G.N. No. 10 of 2013, the time limit to file complaint is 12 months from the date of the incident. According to Ms. Lweno, the exceptions are that, a complainant can enjoy exemption only if he can establish that she was prosecuting the matter bona fide in any court of law against the respondent as such be saved by Rule 28 of the above cited Rules or by getting extension because she was late for more than 27 months.

Failure to take the correct legal measures in time for ignorance and inaction lapse or negligence on the part of the appellant do not constitute sufficient cause for extension of time. To buttress her point, Ms. Lweno cited the case of NGAO GODWIN LOSERO vs. JULIUS MWARABU, CIVIL APPLICATION NO.10 OF 2015 and IBRAHIM AMAN FUNDI vs. TANESCO and EWURA, TRIBUNAL APPLICATION NO. 9 of 2014.

On the letter written by the Director General of the 2nd respondent, it was the argument of Ms. Lweno that, it was not for extension of time but was meant to afford the appellant an opportunity to be heard. According to Rule 29 of G.N.10 of 2013, even extension is limited to six months and no more. Since the complaint subject of the instant appeal, occurred more than six months, 2nd respondent could not extend time.

Ms. Lweno went on to argue that, in the instant appeal, the appellant's advocate was engaged way back in May 2017 when the appellant was in time but instead of taking legal recourse he

kept writing demand notices to sue but chose to go the wrong way and by the time he realized was in wrong place, 12 months had elapsed. To bolt up her point, Ms. Lweno cited the case of PAUL REGINALD BRAMELY HII vs. SECURITY GROUP CAS IN TRANSIT (T) LTD, REVISION NO. 21 OF 2013 HCLD DSM (UNREPORTED) in which it was held that what matters is that the prescribed time has passed not how much time or for what reason has passed.

On that note, the learned State Attorney prayed that the instant appeal be dismissed in its entirety.

The learned advocate for the appellant had nothing to reply.

The task of this Tribunal now is determine the merits or otherwise of this appeal. Having heard the rivaling arguments by learned trained minds for the parties and facts pertaining to this appeal, we are of the considered opinion that the whole appeal boils down to one issue that "whether the complaint by the appellant before the 2nd respondent was time barred or not?." Equally, having revisited the law and the facts of this appeal we are inclined to find that the 2nd respondent was justified in her holding that the complaint was time barred. The reasons we are fortified with our stance are abound. **One**, the incident occurred on 5th August, 2016 and the complaint before the 2nd respondent was reported on 6th December, 2019, more and far away after twelve months statutory period allowed to institute a complaint and more away for the next 6 months for extension of time. **Two**, the fact that

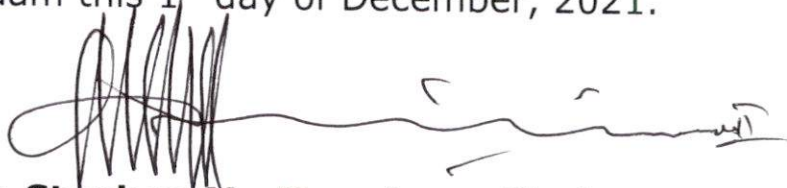
the appellant was pursuing her rights before District Commissioner and Regional Commissioner who are not court of law do not entitle her to exclusion as provided for under Rules 28 and 29 of GN. No. 10 of 2013. **Three**, as correctly argued by the learned State Attorney, and rightly so in our considered opinion, time limit is a pure point of law and once successfully argued it suffices to dismiss the matter.

On the totality of the above reason, we find the arguments by learned advocate for the appellant are misconceived and we accordingly reject them.

That said and done, the instant appeal must be and is hereby dismissed in its entirety in the circumstances with no order as to costs and we affirm the decision of the 2nd respondent that the complaint was filed out of time without extension of time to do so.

Order accordingly.

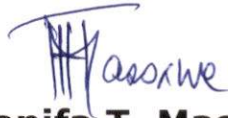
Dated at Dar es Salaam this 1st day of December, 2021.



Hon. Judge Stephen M. Magoiga – Chairman




Eng. Boniface G. Nyamo- Hanga - Member



Dr. Hanifa T. Masawe – Member

Judgment delivered this 1st day of December, 2021 in the presence of Ms. Hawa Lweno State Attorney for the 2nd Respondent and in the absence of the Appellant and the 1st Respondent.



Hon. Judge Stephen M. Magoiga – Chairman

01/12/2021