

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

BEFORE:

HON. R. H. SHEIKH, JUDGE/CHAIRMAN

PROF. J.M. KIRONDE, MEMBER

MRS. P. KASONDA, MEMBER

TRIBUNAL APPLICATION NO. 3 OF 2011

TANZANIA ELECTRIC SUPPLY CO. LTD.....APPLICANT

VERSUS

ENERGY AND WATER UTILITIES REGULATORY

AUTHORITY (EWURA).....RESPONDENT

15/9/2011

Coram: Hon. R.H. Sheikh, J/Chairman

Prof. L. Kironde, Member

Dr. M. Malima, Member

Applicant: TANESCO

For the Applicant: Mr. Msefya, Advocates

Respondent: EWURA

For the Respondent: Mr. Ngowi, Advocate

East African Law Chambers

T/C: Beda Kyanyari

RULING

The applicant TANZANIA ELECTRIC SUPPLY CO. LTD is by this application seeking extension of time for lodging an appeal out of time against a decision made by the respondent on 18/12/2010. The application which was filed on 25/01/2011 is made under rules 16(1) and 23 of the Fair Competition Tribunal Rules, 2006 and is supported by an affidavit sworn by GODSON EZEKIEL MAKIA, legal counsel in the Legal Department of the respondent.

According to the applicant's affidavit evidence, in its decision the respondent had, *inter alia*, abolished the special staff rate for the applicant's staff and in lieu thereof it was ordered by the respondent that the tariff for T1 customers shall apply to the TANESCO staff.

In para 4 of the affidavit it is stated "that the TANESCO staff rate is among incentives secured and agreed through negotiation between the TANESCO Management and the TUICO Negotiating Committee and recognizable under the laws of this country".

In the affidavit evidence it is further gathered that because this matter affected TUICO it was necessary to convene a joint meeting of the management and TUICO, the Workers

representatives in order to consider how the decision should be implemented and/or dealt with.

Para 8 states:

“That because all these issues needed the deliberations of the management and the trade union negotiating committee it was not easy for the applicant to file a notice of appeal within the stipulated fourteen days and hence this application for extension of time.”

The respondent ENERGY AND WATER UTILITIES REGULATORY AUTHORITY (EWURA) has resisted this application. Mr. Ngowi learned counsel for the respondent submitted that no reason has been given in the affidavit evidence to explain why the meeting between the management and TUICO was not held within 14 days. He argued that as the affidavit was sworn by an advocate he ought to have known that the meeting between the management and TUICO should have been held within 14 days so that the decision to appeal against EWURA’s decision could have been made before the expiry of the 14 days prescribed by the rules for filing a notice to appeal.

We have carefully considered the respective submissions by learned counsel.

From the applicant’s affidavit evidence it is evident that the applicant was not idle and in fact took steps to convene a

meeting between the management and TUICO which was essential before taking a decision to appeal.

In the circumstances we are of the view that the decision to appeal which required a joint decision by members of two separate bodies and involved the interests of workers could not have been made by the applicant's management only and for that reason probably could not have been made in less than 14 days. It was unlikely therefore that the notice of appeal could have been filed within 14 days after the decision.

Upon careful consideration of the respective affidavits and submissions we are satisfied that the applicant has advanced sufficient reasons for extending time to lodge the appeal.

In the event the application is granted with no order as to costs. The notice of appeal should be lodged by 21/09/2011.

Signed

Judge R. H. Sheikh – Chairman

Signed

Prof. J.M.L. Kironde – Member

Signed

Dr. M.M P. Bundara – Member

15/09/2011

Ruling read this 15/09/2011 in the presence of Mr. Msefya learned counsel for the applicant and Mr. Ngowi learned counsel for the respondent, and Beda, T/C.

Signed

Judge R. H. Sheikh – Chairman

Signed

Prof. J.M.L. Kironde – Member

Signed

Dr. M.M P. Bundara – Member

15/9/2011