

IN THE FAIR COMPETITION TRIBUNAL OF TANZANIA
AT DAR ES SALAAM

APPEAL NO. 3 OF 2008



TANZANIA INTERNATIONAL CONTAINER TERMINAL
SERVICES LIMITED (TICTS)..... APPELLANT

VERSUS

SURFACE AND MARINE TRANSPORT REGULATORY
AUTHORITY (SUMATRA).....RESPONDENT

REASONS FOR DECISION/RULING

This is an appeal from the decision of the SURFACE AND MARINE TRANSPORT REGULATORY AUTHORITY (SUMATRA) in Order No. SMTRA/06/2008 dated 11/06/2008, made by the respondent (SUMATRA) under section 16(1) and (2) of the Surface and Marine Transport Regulatory Authority Act, 2001. The appeal was filed in this Tribunal on 25/07/2008.

The undisputed historical background to this appeal may be briefly stated as follows:- On 18/4/08, Tanzania Ports Authority (TPA)

submitted to the respondent an application for an upward review of tariffs for storage and removal of containers at the Dar es Salaam Container Terminal. The proposed tariff increase was allegedly (according to TPA's letter) intended to discourage shippers from turning the port into a storage area. This was meant to be one of the measures for containing the congestion that prevailed at the port at the time. On 11/6/08 the respondent issued Order No. SMTRA/06/2008 in which it issued extensive directives for the increase of tariff scales. However the tariff scales though increased were less than the requested scales. TANZANIA INTERNATIONAL CONTAINER TERMINAL SERVICES LIMITED (TICTS) a major provider of cargo handling services at the Dar es Salaam Container Terminal was aggrieved with the entire order aforesaid. Hence this appeal. Before the hearing of the appeal on merit, the respondent on 7/8/08 and 10/9/2008 filed Notices of Preliminary Objection challenging the competence of the appeal on two grounds. The first ground was abandoned at the hearing of the preliminary objections by Mr. Songoro learned counsel for the respondent; so we will disregard it. The second ground reads as follows:-

The appellant has no locus standi to pursue an appeal pursuant to Rule 7 of the Fair Competition Tribunal Rules, G.N. 189 of 2006 since he was not the applicant in the TPA's application which was determined by the Respondent.

In support of the aforesaid ground of objection Mr. Songoro submitted that the appellant not being a party to the original application filed by TPA could not lodge an appeal. He argued that even though both S.28(1) of the SUMATRA Act and rule 7(1) of the Fair Competition Tribunal Rules provide that any person may appeal to the Fair Competition Tribunal, the appellant could not appeal as it was not party to the original application which was filed by the Tanzania Ports Authority. It was Mr. Songoro's submission that the words "any person" in S.28(1) and rule 7(1) aforesaid referred to any of the parties in the original application and not any other person. In support of his contention he cited the decision of the Court of Appeal of Tanzania in the case of Attorney General V. Maalim Kadau and 16 others (1997) T.L.R. 69. In this case, Mr. Songoro submitted, the appellant if aggrieved with the decision of the respondent ought to have lodged an application for Review before the respondent or alternatively an application to intervene under rule 17(1) of the Rules. Mr. Songoro maintained that the words "any person" which also appear in rule 76 of the Court of Appeal Rules, were interpreted by the Court of Appeal in the case of Attorney General V. Kadau, Supra, to mean any one of those involved in the original case and not otherwise. In his view, if the words "any person" referred to in S.28(1) and rule 7(1) are given their natural meaning, it will lead to vexatious appeals by all and sundry; indeed by any person at large even if he is not a party to the original proceeding/application.

Countering these submissions Mr. Rwechungura learned counsel for the appellant submitted that the appellant was a party to the original application for tariff revision made by Tanzania Ports Authority by letter dated 18/4/2008, that both the letter of application aforesaid and the Report by the respondent on Evaluation of the Application to increase storage rates make extensive reference to TPA/TICTS (appellant). He maintained that in any case the situation in this case cannot be equated to proceedings in the ordinary courts, as under S.18(5) of the Sumatra Act, the rights of certain persons whose interests are likely to be affected by the outcome of any inquiry which is conducted by the respondent in the exercise of its power are expressly recognised. He asserted that in the instant case a notice of inquiry from the respondent was issued to the appellant prior to the conducting of the inquiry which led to the determination/order complained of. Mr. Rwechungura firmly maintained that the appellant is a 'statutory' party in the application made to the respondent by TPA and that the decision not only directly affects its interests but the order itself expressly refers to the appellant. In Mr. Rwechungura's view rule 17(1) is inapplicable to the instant matter as there was no appeal before this Tribunal when this appeal was filed. He insisted that the appellant had no avenue to pursue to protect its interests save to appeal to this Tribunal. He was emphatic that the case of the Attorney General V. Kadau and the circumstances obtaining therein are distinguishable and inapplicable to the instant matter.

At the end of the submissions by the learned counsel for both the appellant and respondent on the preliminary objection, the proceeding was adjourned briefly. After due deliberations the Tribunal overruled the preliminary objection but reserved its reasons, which reasons this Tribunal will now give.

The Tribunal has carefully considered the submissions by learned counsel on the preliminary objection. With respect we agree with Mr. Rwechungura's submission on the point.

Firstly, while it is true that the Court of Appeal when interpreting Rule 76 of the Court's Rules, 1979 was of the opinion that the words "any person" should be interpreted to mean any of the parties involved in the original case and not any other person, the situation herein is distinguishable.

The first factor to take into account is the object of the Fair Competition Act under which this appeal was lodged. S.3 states that the object of the Act is to enhance the welfare of the people of Tanzania by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct in order to increase efficiency in the supply of goods and services and protect consumers, inter alia. It is our considered view that any person, whether a provider or consumer who is affected and aggrieved by a decision of a regulatory body established to regulate the provision of a


service may appeal to the Tribunal (see section 85 of the Fair Competition Act). The fundamental objectives of the Fair Competition Act are based on the intention of the legislators to remove disputes relating to issues of fair competition in trade and commerce and unfair market conduct from ordinary courts to this Tribunal. It is undisputable that the appellant is a party, a service provider known to the regulator and that its interests were affected by the decision/order complained about. The respondent does not deny this.


In our considered opinion, in the interest of fair competition it would not be prudent for this Tribunal to tie itself down with legal technicalities that will negate the need to ensure just, expeditious and economical handling of proceedings. Besides even though the letter of application for tariff revision originated from TPA, clearly the appellant featured extensively (even if in a passive form) as a necessary and a major interested party and beneficiary of the proposed tariff increase, and hence likely to be affected by the decision of the respondent. Indeed as pointed out by Mr. Rwechungura the appellant who is undeniably a service provider is one of the persons whose interests are recognised by the respondent when conducting an inquiry. From the submissions by both learned counsel it is gathered that an inquiry was conducted by the respondent prior to the making of the decision and the appellant was one of the parties to whom notice of the inquiry was sent as is mandatory in terms of section 18(5) of the Sumatra Act.

The appellant who was apparently given notice as a service provider is a party whose interests are likely to be affected by the outcome of the inquiry. Clearly the appellant was a necessary party to the inquiry which originated from TPA's application. We cannot therefore accede to the argument that the appellant was not a party to the application or that it cannot appeal against the decision which clearly affected it. With respect, we agree with Mr. Rwechungura that the case of the Attorney General and Kadau is substantially distinguishable.

Last but not least it appears to us that TICTS has no other avenue for pursuing its interests under the Sumatra Act. Indeed we must make it clear that we cannot agree to the suggestion by Mr. Songoro that the appellant could have lodged an application to intervene under rule 17(1) of the Rules. This rule can only be relied on by a party where an appeal has already been filed by another person, which is not the case in the matter now before us.

For the above reasons we find the preliminary objection devoid of merit. It is accordingly hereby overruled with costs. The appeal will now proceed on merit.


R. Sheikh, J. - Chairman


Mr. Kibodya - Member



Prof. Kironde

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Member

19/9/2008