IN THE FAIR COMPETITION TRIBUNAL OF TANZANIA

AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 11 OF 2016

YUSUFU MZEE LASHIKONI................APPEALANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED (TANESCO)..1ST RESPONDENT

ENERGY AND WATER UTILITIES REGULATORY AUTHORITY (EWURA)...........................2ND RESPONDENT

JUDGMENT

This appeal arose from the decision of the second respondent, the Energy and Water Utilities Regulatory Authority (hereinafter referred to as "EWURA") where it dismissed the claim of Tshs. 3,036,000/= being cost of repairing the appellants electrical equipment and Tshs. 6,828,665.74 being excess charges on the average monthly consumption. The 2nd respondent, however, awarded the appellant Tshs. 3,500 being a refund for meter inspection fee and costs of the complaint. Aggrieved with the decision, the appellant has come to this Tribunal with the three grounds of appeal; namely:-

1. The regulatory body below gravely erred in law in not awarding relief by way of damages to the appellant, it having made a correct finding that the first respondent violated mandatory provisions of the customer service charter
2. The regulatory body below erred both in fact and law in failing to make a finding that the appellant had on a balance of probabilities successfully established his case.
3. The regulatory body below erred in making a biased and unwarranted observation that the appellant had been casual in handling his case

From the above grounds of appeal, the appellant seeks from the Tribunal the following orders:-

1. The appeal be allowed with costs
2. The decision below be quashed and set aside
3. That the appellant be fully compensated (Tshs. 3,036,000/=) being the costs of repairing and or replacing damaged equipment.
4. That the appellant be fully reimbursed for excessive and unjustified electric bills paid.
5. Any other reliefs deemed fit to grant.

The facts that gave rise to the present appeal can be canvassed as follows:

On 9th February, 2016 the appellant lodged a complaint to the 2nd respondent alleging that there was a defective meter thus caused electric shot at his Tanzanite Mine site located at Mererani due to 1st respondent's electric supply system. He submitted before the 2nd respondent that he had requested the 1st respondent on several occasions to carry out inspections and testing of his old meter without any success. He said he made his requests through writings on 22nd April, 2012; 27th July, 2012 and 14th November, 2012. On how the fire started, the appellant said when his employees switched on air compressor, in order to allow supply of oxygen to the mine for operations to continue, an electric short occurred due to lose connections on the wire at the electric pole supplying power to the premises, thus the power to the pole got burnt and his motor, circuit breaker wire and main switch got burnt. Due to all these, the appellant prayed for compensation of Tshs. 3,036,000/= for the burnt items; a declaratory order that the 1st respondent's bill of Tshs. 6,828,665.74 in excess of the average monthly consumption of 4653 units, and any other reliefs deem fit.

After hearing the evidences from both parties, the 2nd respondent found that the appellants right to have his meter tested was violated by the 1st respondent who has responsibility to do so according to paragraph 2(b) and (c) of the Customer Service Charter. The 2nd respondent further held the bills issued by the 1st respondent are justified because when it made a visit it found out that LUKU meter is defective, it dispenses power

through one phase even when the meter has no credit which means that the appellant was consuming power which he does not pay for. The 2nd respondent also found that the appellant failed to prove that an electric shot was caused by the 1st respondents supply system. The 2nd respondent, however, awarded the appellant costs of the complaint and Tshs. 3,500/= monies paid for meter inspection fees. Aggrieved by these findings the appellant has preferred the present appeal.

At the oral hearing of the appeal, the appellant appeared in person with no legal representation while the 1st respondent had the representation of the counsel Diana Mahatane and the 2nd respondent had a representation of counsel Hawa Lweno.

The appellant being a layperson had nothing much to submit. He told the Tribunal that he had filed a memorandum of appeal together with the skeleton arguments which he prayed to adopt them. He highlighted few things that he filed form no. 100(a) where he attached all of his six annetures namely a letter titled "kuripoti ubovu wa mita ya umeme" dated 14th November, 2012. A letter dated 27th July, 2012 titled "Uchunguzi wa Ankara za umeme/mita A/C No. 56190058". A letter dated 22nd October, 2014 titled "Ombi la kuondolewa riba kwenye deni la A/C No. 65048042"; TANESCO's Tax Invoice; and a letter dated 12th May, 2015 titled "Malalamiko na madai yaliyosababishwa na TANESCO mgodini Mererani Block B, Kitalu No. 52". The appellant explained further that though he supplied the 2nd respondent

with all of his receipts but the 2nd respondent never took them into account in its decision. He challenged the findings of the 2nd respondent in that there is no proof of meter running for 12 hours for 20 days while he has proved his claims on average consumption of 4653 KW per month through his 3 years daily consumption units.

The appellant further said he was not involved in the fire fault because meter no. 43135906956 was not working properly. He said immediately after it was installed, he tried to test it and it got burnt therefore the meter was changed to meter number 43113856298. He said TANESCO before installing their meter, they made inspection and observed that all necessary protection was in place and that is why the 1st respondent decided to connect the electricity. He therefore prayed for his appeal to be allowed with costs.

The counsel for the 1st respondent begun her submission by adopting skeleton arguments and list of authorities. She said the appellant did not pray for payment of Tshs. 6,828,665.74 in his complaint form that is why the 2nd respondent did award it. She contended that the 1st respondent calculated consumption through his load on the site and not meter reading that is why he was charged Tshs. 6,828,665.74. She said courts are bound to award what has been prayed for in the pleadings and not otherwise.

For the figure of Tshs. 3,036,000/=. She contended that the appellant failed to prove that damage was caused by electricity. It was pointed out that the 2nd respondent in its visit at the site found that there was no any physical evidence to suggest there was fire at the metering point (at the pole) or at the bracket connections, therefore it was concluded that may be there was a poorly disconnection of joints due to over current emanating from the fault compressor motor.

On the response of the complaints, she said the 1st respondent did respond through a letter dated 16th February, 2016. Therefore, she concluded by submitting that the appellant failed to prove its case before the 2nd respondent.

The counsel for the 2nd respondent also adopted her skeleton arguments, reply to memorandum of appeal and submissions made by the counsel for the 1st respondent. She added that consumption of units was concluded bearing on load at the site and defectiveness of the metre and it was found that defective meter continues to dispense power through one phase even when the meter has no credit which means that the appellant was enjoying free power through this one phase. She therefore prayed for the dismissal of the appeal with costs.

The appellant rejoined by praying to the Tribunal not to consider respondents list of authorities as they were not served upon him and he acknowledged that the 1st respondent did respond to his

several complains with a single letter. He also said his prayers/reliefs sought are contained in his several letters sent to the 1st respondent and attached to his complaint form with receipts. He also said the report by Technical Team of 2nd respondent prove that the 1st respondent did not place proper connectors. He therefore insisted that the negligence was on part of the 1st respondent.

We have carefully heard the substantive submissions made by the parties and we wish to start with the complaint advanced by the appellant that he was not served with the list of authorities filed by the respondents. The records show that it is only the 1st respondent who has filed a list of authorities and the 2nd respondent did not file any list of authorities though in her skeleton arguments she made reference to an unreported case law which is attached to it. The complaint by the appellant is based on the provisions of rule 22 of the Fair Competition Tribunal Rules GN 219 of 2012 (hereinafter referred to as "FCT Rules") which requires parties to file five copies of the list of authorities with the registrar, not less than three days before the hearing date of the appeal and serve a copy of the list on the other party.

As we have hinted herein, the 2nd respondent did not comply with the rule even the 1st respondent, even though she did file the list but failed to serve a copy upon the appellant. Therefore, both respondents failed to comply with the mandatory provisions

of rule 22 of the FCT Rules. In that regard it will be unfair and prejudicial to the appellant if this Tribunal will consider the respondent's list of authorities and authorities added in the skeleton arguments. As there was no compliance to rule 22 of the FCT Rules then the same are rejected and they will not be taken into consideration by the Tribunal.

Let us now come back to the grounds of appeal. The first ground of appeal is basically centred on the failure of the 2nd respondent to award damages to the appellant. It is the complaint of the appellant that after the 2nd respondent having found that the 1st respondent violated the customer service charter then it ought to have awarded damages to the appellant. According to records, the damages which the appellant wants to be awarded are:

(1) Tshs. 3,036,000/= being costs of repairing and replacing damaged equipment.

(2) Reimbursement of excessive and unjustified electricity bills paid to the 1st respondent.

The above damages are specific damages. It is trite law that specific damages must be strictly pleaded and proved. For instance in **Masolela General Agencies Vs. African Inland Church Tanzania** [1994] TLR 192 the Court of Appeal of Tanzania held:

"Once a claim for specific item is made, that claim must be strictly proved, else there would be no difference between

specific claim and general one. The trial judge rightly dismissed the claim for loss of profit because it was not proved".

In the present appeal, the appellant though made a claim of Tshs. 3,036,000/= failed to prove the same before the 2nd respondent. It is on record that during site visit made by the 2nd respondent, it was noted that there was no physical evidence to suggest that there has been fire at the metering point as intimidated by the appellant. Even the appellant himself failed to produce photos before the 2nd respondent which he alleged to have taken to prove that there was loose connection. It is for these reasons that led the 2nd respondent to decline the prayer for compensation of Tshs. 3,036,000/=.

For the Tshs. 6,828,665.74 as a reimbursement of bills, was not pleaded by the appellant. Furthermore, it is on record that during the site visit made by the 2nd respondent it was noted that LUKU meter currently in use is defective as it continues to dispense power through one phase even when the meter has no credit. It was further found that the allegation of the appellant that his average monthly consumption is 4653 KW cannot be established with certainty because there is a doubt on proper functioning of the meter. It is for these reasons that led the 2nd respondent to overrule the appellants claims. We fully associate ourselves with the finding of the 2nd respondent because first the claim of Tshs. 6,828,665.74 was not pleaded and secondly the

claim of Tshs. 3,036,000/= though pleaded was not proved. Therefore, the 2nd respondent rightly declined the award of damages claimed by the appellant.

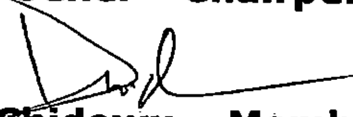
Having ruled on the first ground, let us now deal with the second ground. On this ground, the appellant is complaining that he has successfully established his case on the balance of probabilities but the 2nd respondent failed to appreciate it. According to section 110(1) of the Evidence Act. Cap. 6 whoever desires any court to give judgment has a legal obligation to prove it. In the matter at hand, the evidence brought forward before the 2nd respondent was that of the appellant himself. Having heard the whole evidence of the appellant, the 2nd respondent found that the appellant failed to establish its case. As hinted herein, the appellant failed to establish that the electric shot was due to the 1st respondent's fault; he has failed to prove that he incurred loses to the tune of Tshs. 3,036,000/= and he has failed to prove that the meter was working properly for him to be entitled to a reimbursement of the bills. We therefore find that the 2nd ground of appeal has no merit.

The last complaint is the allegation of biasness on part of the 2nd respondent. The appellant stated in its ground of appeal that the 2nd respondent made an unwanted observation that the appellant had been casual in handling his case. During the hearing it was not pointed to the Tribunal as to the exact page or paragraph where the 2nd respondent made such an

observation. Be as it may, we have gone through the entire decision of the 2nd respondent and we failed to trace any such observation. In that regard, we see no merit on this ground.

All in all, the appeal has no merit. We therefore proceed to dismiss it with costs. It is so ordered.

Hon. Barke M.A. Sehel – Chairperson



Mr. Donald L. Chidowu – Member

Dr. Theodora Mwenegoha – Member

03/07/2018

Judgment delivered this 3rd day of July, 2018 in the presence of Mr. Yusufu Mzee Lashikoni (Appellant) in person, Ms Diana Mahatane, Advocate for the 1st Respondent also holding brief of Ms Hawa Lweno, Advocate for the 2nd Respondent.

Hon. Barke M.A. Sehel – Chairperson

Mr. Donald L. Chidowu – Member

Dr. Theodora Mwenegoha – Member

03/07/2018