

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

**TRIBUNAL APPEAL NO. 12 OF 2017**



**PAULO MTETE .....APPELLANT**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY CO. LTD  
(TANESCO) .....1<sup>ST</sup> RESPONDENT**

**ENERGY AND WATER UTILITIES REGULATORY  
AUTHORITY (EWURA) .....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

The Appellant, Mr. Paul Mtete, being dissatisfied by the decision of the Energy and Water Regulatory Authority (EWURA) appealed to this Tribunal on the following grounds, namely:

1. That the regulatory body erred in law and facts for failure to evaluate facts as were presented by the appellant and his witness, at the same time the relevant laws were grossly violated.

2. That the regulatory body erred in law and facts for leaving out some evidence of the appellant and failure to evaluate the same evidence of the appellant.

At the hearing of the matter, the Appellant was represented by Advocate Ntanga, who started addressing the Tribunal by narrating the Historical Background of the Appeal. Counsel Ntanga submitted to the Tribunal that the Appellant is the owner of a house located at Buguruni Kisiwani with Residential Licence number ILA/BUG/K57/49. That, the said house is electrified and the meter number is 01340 94252. That on 22/10/2012 around 11:30am the house was hit by fire and due to that fire, the house was damaged and all households were damaged beyond recognition.

The Counsel for the Appellant submitted further that this is the reason the Appellant filed an Application at EWURA claiming for compensation of and household items. EWURA decided the matter in favour of the Respondent (TANESCO) and that is why appellant lodged this appeal.

Submitting further on the grounds of Appeal, the Counsel for the Appellant argued jointly the first and third grounds where he stated that on 22/10/2012 3 witnesses were at the site when the fire broke, CW2 – Amir Adinan Msuya; CW3 – Theresia Paulo Mtete; and CW4 – Amina Hassani. All these three witnesses testified before EWURA that the source of fire

was the Transformer which supplied electricity at nearby house, exploded; its sound was heard all over the premises. After such explosion all nearby houses experienced high voltage and most of them got their electronic devices damaged. Immediately sparks started at the pole which directed the wire to the house of the appellant and the sparks ignited several times at the pole and within seconds the sparks spread to the bracket and hit them at several times and fire started at the bracket.

The Counsel for the Appellant submitted that from there the fire was transferred to the fisher board and the fire spread to the meter and spread all over the house. He contended that CW2 disconnected the wire from bracket. The Counsel for the Appellant argued that these are eye witnesses who witnessed the whole scenario. The counsel for the appellant argued further that the 2<sup>nd</sup> respondent disregarded CW2's testimony simply because CW2 admitted that bracket insulators cannot catch fire easily.

The Counsel for the Appellant also submitted that CW4 – Kulwa Salehe Nzekela, fire officer, tendered the report which elaborated that that the source of fire started from the transformer to the bracket to fisher board but the witness was disregarded by EWURA. He referred to the case of **Kisima Richard VS Republic [1989] TLR 143** where it was held that **“standard of proof in that evidence should not leave any doubt”**. He was of the view that the evidence of Appellant's

case left no doubt. Therefore, it is of great surprise why the application was not granted at EWURA.

The Counsel for the Appellant prayed to the Tribunal that the Appeal be allowed.

In Replying to the Respondent's submissions of the Counsel for the 1<sup>st</sup> Respondent, Advocate Batilda Mallya contended that the Appellant had brought seven witnesses to testify before the Authority and that among the witnesses was the complainant himself. The facts presented were clearly evaluated by the authority.

The Counsel for the 1<sup>st</sup> Respondent submitted that the testimony of Paul Mtete (PW1) was hearsay as he was not at the scene, and therefore he was not in the position to state neither the source nor the start of the fire. The Counsel cemented this argument by citing section 52 (1) (a) of the Law of Evidence Act, cap.6 that it requires for oral evidence be direct.

The Counsel for the 1<sup>st</sup> Respondent argued that CW2 changed his words saying that fire started at the disc insulators made of glass which are neither capable of catching fire nor heat. The Counsel further argued that High voltage cannot be measured by mere eyes; and that technically if transformer fuse blew it means power was already cut off automatically. Hence no electricity passing after the fuse blew. The Counsel submitted

that the witness was neither the electrician nor fire expert to testify the source of fire which the appellant relied upon.

The Counsel for the 1<sup>st</sup> Respondent submitted that most witnesses concentrated to testify on the fire and how it started but no one of them was able to state the source of fire. The authority wanted to know what the source of fire and of none of them could tell the authority what the source of fire was. The start of fire could have been at any place at that house but what caused the fire to start was the question to be determined by the Authority. Fire started in one of the bedrooms in which there was no meter or switch installed. The Counsel submitted that fluctuation of power or power surge cannot cause fire. That power surge is normal in electricity industry.

The Counsel for the 1<sup>st</sup> Respondent further submitted that CW3 said she saw sparks at the pole and brackets. When she was asked in cross examination if the pole was burnt, she said pole was not burnt. Further, CW4 said he arrived at the scene after the fire was already extinguished. His report based on the testimony of those who were around, so his report is hearsay and it had nothing to make the Authority to decide in favour of the Complainant.

The Counsel for the 1<sup>st</sup> Respondent submitted that CW5 said source of fire was an electricity fault because he saw fire at the bracket. Upon cross examination he said there was no smoke

coming from inside that is why there was no fire from inside. This cannot justify the source of fire.

CW6 and CW7 both said they saw sparks and that the transformer was at faulty. Electric transformer default cannot be detected by mere eye. It has to be examined.

The Counsel for the 1<sup>st</sup> Respondent prayed for EWURA's award to be upheld and cost of appeal be borne by the Appellant and any other relief that Tribunal may grant.

The Counsel for the 2<sup>st</sup> Respondent Advocate Hawa Lweno, submitted that the 2<sup>nd</sup> respondent evaluated all the facts i.e oral testimonies, documents as well as site visit and arrived at its findings based on the law. The Counsel prayed for the Tribunal to adopt documents tendered to the Tribunal as part of their submission and prayed for dismissal of appeal on its entirety with costs.

In the Rejoinder the Counsel for the Appellant submitted that the hearsay evidence of CW's was collaborated by CW2; CW3 and CW7 were not present.

As regards source of fire, the counsel for the appellant stated that source of fire started at the bracket and spark at the pole and that not all sparks result into fire.

The appellant's counsel went on to rejoin that there was a number of defects which happened to all neighbours eg. CW2

and CW7 whose electronic devices were damaged due to high voltage.

The appellant's counsel submitted that allegation that fire started in one of the room is not true as fire started outside.

It was the appellant's counsel submission that, at the site visit Msafiri Mtepa said fire purely originated from the bracket; and that site visit was made after four years.

According to the appellant's Counsel, testimony of RW1 was based in assumptions not facts. He is the fire expert but he did not conduct any report on the fire incident. He was just lecturing the authority. The Counsel for the appellant reiterated that the source of fire was outside the bracket.

In determining the Appeal before us, the Tribunal has extensively and carefully considered the arguments of both sides. The Tribunal is asked to determine the main contentious issues that being that; whether the regulatory body erred in law and facts for failure to evaluate facts as were presented by the appellant and his witnesses and; whether the relevant laws were grossly violated. That, the regulatory body erred in law and facts for leaving out some evidence of the appellant and failure to evaluate the same evidence of the appellant.

In addressing the Appeal, the Tribunal would like to start examining whether the relevant laws were grossly violated. In their submission, Counsels for the Respondents informed the Tribunal that the Authority in determining the dispute used the

provisions of the EWURA Act, Electricity Act and EWURA Rules G.N No.10 of 2013. Both Counsels for Respondents submitted that all the witnesses were heard and all evidences tendered were considered. It is noted that at no time during the submissions, the Counsel of the Appellant pointed to the Tribunal the provisions of the law which have been grossly violated. Therefore, the Appellant has failed to establish which conduct, act or omission by EWURA is contrary to the law. It is therefore the finding of the Tribunal that the Counsel for the Appellant has failed to substantiate his claim and prove to the Tribunal that the relevant laws were grossly violated.

This takes us to the remaining issue whether the Regulatory body erred in law and facts for failure to evaluate facts as were presented by the appellant and his witnesses and for leaving out some evidence of the appellant and failure to evaluate the same evidence of the appellant.

It is noted by the Tribunal that the Counsel for the 1<sup>st</sup> Respondent gave account of all of the Appellant's seven witnesses which were brought before the Authority to hear the Appellant's Complaint. This was later supported by the submission of the Counsel for the 2<sup>nd</sup> Respondent. The Counsel for the 1<sup>st</sup> Respondent further gave account of each witnesses of who testified before the Authority and why or how the evidences tendered were considered.



The Tribunal agrees with the Counsel for the 1<sup>st</sup> Respondent that the testimony of the Appellant, (PW1) and that of CW4 were hearsay as both were not at the scene and hence not in the position to state neither the source nor the start of the fire. That the witness CW2 changed his words saying that fire started at the disc insulators made of glass which are neither capable of catching fire nor heat and that CW3 said she saw sparks at the pole and brackets but when she was asked in cross examination if the pole was burnt, she said pole was not burnt. That CW5 said source of fire was an electricity fault because he saw fire at the bracket. However, upon cross examination CW5 said there was no smoke coming from inside that is why there was no fire from inside, that CW6 and CW7 both said they saw sparks and that the transformer was at faulty.

The Tribunal is of the view that the Respondents submission tendered during the hearing, in the memorandum of reply of appeal, skeleton of arguments and in consideration of what has been tendered through the records of proceedings and the award of EWURA, is sufficient evidence that the 2<sup>nd</sup> respondent, did not only record the evidence given but also considered the evidences of both the appellant and the respondent in reaching the decision.

It has been observed that the main argument of the Respondents was the source of fire needed to be established in order to establish liability. We are in agreement with the

Respondents that in order to establish whether the 2<sup>nd</sup> Respondent is liable, we have to establish the source of fire.

The evidence tendered by the Respondents to the Tribunal, which is also presented in the Award granted by EWURA revealed that the 1<sup>st</sup> Respondent had visited the site for inspection and upon close examination it was found that the fire was more intense from the inside the room below the bracket and not on the outside. It was also noted that the ceiling material, which was purported that the fire was ignited from after being transferred from outside pole and wire, was not much affected by the fire. The examination from the site further revealed that the exterior of the premises showed no evidence to suggest that the structure of the roof around the brackets could permit electricity sparks originating from the terminals.

Further, it was noted that while the outside part was not much affected by the fire everything else in one room was much affected by the fire and everything was burnt down. However, the burnt room had no meter, the main switch and the circuit breaker. The room containing the meter, the main switch and the circuit breaker where the wires to the brackets connected directly to this room situated next to the severely burnt room. This room was found to have been mostly affected with the fire from the topside of the wall, that is from the ceiling while the lower parts of the walls were less affected by the fire.

The above expressed scenario, provides proof that the source of fire was most likely from the severely burnt room. Similarly, there is no conclusive proof that the source of fire was from the brackets or the poles.

Upon revisiting section 110 of evidence act, cap 6 which put a burden of proof upon a person who alleges to prove his allegations, we are therefore of the opinion that facts provided by the Appellant failed to prove the source of fire. Accordingly, we find no merit on the Appeal and dismiss it with costs.



**Judge Barke M.A. Sehel – Chairperson**



**Hon. Yose J. Mlyambina – Member**



**Dr. Theodora Mwenegoha – Member**

**04/07/2018**

Judgment delivered this 4<sup>th</sup> day of July, 2018 in the presence of Laurent Ntanga, Advocate for the Appellant and in the absence of Respondent.



**Judge Barke M.A. Sehel – Chairperson**



**Hon. Yose J. Mlyambina – Member**



**Dr. Theodora Mwenegoha – Member**

**04/07/2018**