

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

**APPEAL NO.20 OF 2018**



**BETWEEN**

**SIMON PETER BAJUTA.....APPELLANT**

**AND**

**ORYX GAS TANZANIA LTD .....1<sup>ST</sup>RESPONDENT**

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

**RULING**

This is a ruling in respect of the Preliminary Objection raised by the Appellant when the matter came for hearing to wit:

- a) THAT, the 2<sup>nd</sup> Respondent has contravened Rule 19 of the Fair Competition Tribunal Rules, 2012 by failing to Reply to the Memorandum of Appeal out of time.

b) That the document filed by the 2<sup>nd</sup> Respondent is subject to rejection under Rule 12 of the Fair Competition Tribunal Rules, 2012

In arguing the Preliminary Objection, Counsel for the Appellant, Advocate Modestus Njau, submitted that the 2<sup>nd</sup> Respondent filed a Reply to Memorandum of Appeal after a lapse of statutory period by 7 days. He submitted further that the reply was filed after lapse of 14 days from the date of service. In elaborating further, Counsel for the Appellant argued that the Appellant filed his appeal on 31<sup>st</sup> August, 2018 and the copy of the Memorandum and Record of Appeal was served upon the 2<sup>nd</sup> Respondent on 3<sup>rd</sup> September, 2018. The reply was filed on 24<sup>th</sup> September, 2018 out of time by 7 days. He submitted that Rule 19(1) requires the Reply to be filed within 14 days, after being served. He contended that the 2<sup>nd</sup> Respondent filed their Reply after 21 days, as the 14 days ended up on 17<sup>th</sup> September, 2018. Counsel for the Appellant further argued that the 2<sup>nd</sup> Respondent did not seek leave to file out of time. That being the case, the 2<sup>nd</sup> Respondent did not comply with the law and procedure of filing documents.

Counsel for the Appellant further submitted that as to the second limb of Preliminary Objection, the application of Rule 12(1) which provides for the Registrar's power to reject the document should be substituted with Rule 38(d) since the document has been admitted. Therefore, Rule 38(d) is the

proper Rule to make an order expunging the Reply filed to the Tribunal as the Rule empowers the Tribunal to give any necessary orders for the interest of justice.

Counsel for the Appellant prayed the offending document be expunged from the Tribunal record with costs.

In responding to the Appellant's submissions, Counsel for the 2<sup>nd</sup> Respondent, Advocate Hawa Lweno, submitted that Rule 19(1) of the FCT Rules specify time for filing a Reply to be 14 days and that they (2<sup>nd</sup> Respondent) filed the Reply to the Memorandum of Appeal on 24<sup>th</sup> September, 2018 after receiving the Memorandum of Appeal on 10<sup>th</sup> September, 2018. Counsel for the 2<sup>nd</sup> Respondent further contended that the Appellant served the documents of Appeal including the Notice of Appeal to their Northern zoned office located in Arusha which has no lawyers to prosecute the matter.

Counsel for the 2<sup>nd</sup> Respondent further argued that the Appellant was present in person during the award delivery and was accompanied by one Agrrey Tendwa and were informed of where to serve the documents of Appeal in case aggrieved with the decision of the 2<sup>nd</sup> Respondent. Counsel for the 2<sup>nd</sup> Respondent argued that as a result, they received the documents on the 10<sup>th</sup> September, 2018 and consequently filed the Reply to the Memorandum of Appeal on 24<sup>th</sup> September, 2018.

In his Rejoinder, Counsel for the Appellant argued that they were never served with a notice of address and that the 2<sup>nd</sup> Respondent did file Notice of Address later on 28<sup>th</sup> September 2018 several days after filing their Notice of Appeal.

In determining the Preliminary Objection before this Tribunal, the Tribunal has to establish whether the 2<sup>nd</sup> Respondent has filed the Reply to the Memorandum of Appeal out of time. It was a submission of the Counsel for the 2<sup>nd</sup> Respondent that they had received the documents on 10<sup>th</sup> September, 2018 and filed the Reply to the Memorandum of Appeal on 24<sup>th</sup> September, 2018 implying filing on time. It was also a submission by the 2<sup>nd</sup> Respondent that the Memorandum of Appeal was first served in their Arusha office on 3<sup>rd</sup> September, 2018.

It is evident from the above submissions that Counsel for the 2<sup>nd</sup> Respondent is denying service effected in Arusha due to the fact that it is not the headquarters and lacks lawyers to prosecute the case. Counsel for the 2<sup>nd</sup> Respondent also argues that they had informed the Appellant where to serve the documents of Appeal in case aggrieved with the decision of the 2<sup>nd</sup> Respondent.

The question of service was discussed in the case of **SAID SALIM BAKHRESSA v ALLY A NGUME [1997] TLR 312**

where Counsel for the Appellant denied service of the summons as the service was effected to his employee at the time he was outside the country and he was not aware of the case. The Court of Appeal of Tanzania - Dar es Salaam (Lubuva JA) was of the view that the question to be determined is whether the appellant was made aware of the case and the date set for trial...as such is to the effect that the appellant was served.

It is evident from the facts at hand that the Counsel for the 2<sup>nd</sup> Respondent were made aware of such service; and that they were able to file the Reply to the Memorandum of Appeal without the need of being re-served with the same.

It is the view of this Tribunal that Counsel for the 2<sup>nd</sup> Respondent has failed to convince the Tribunal that the service of Appeal tendered in Arusha is not a proper service. The Tribunal notes that the 2<sup>nd</sup> Respondent's Northern Zone Office located in Arusha is a proper office of the 2<sup>nd</sup> Respondent and that the documents served were received with no hesitation as the personnel in the Zonal Office in Arusha are part of the 2<sup>nd</sup> Respondent's personnel. Counsel for the 2<sup>nd</sup> Respondent failed to refer to the Tribunal accredited facts and any source of law or precedent to advance her arguments that they were served on the wrong address. Moreover, Counsel for the 2<sup>nd</sup> Respondent has failed to prove that they had served the Appellant with a notice of address of service.

It is prudent to note herein that, it is not in dispute that service was effected in Arusha; has it been disputed that service was not done in Arusha, the Tribunal would have been forced to consider otherwise.

It is for this reason that the Tribunal finds such arguments with no strength.

The Tribunal is of the well considered opinion that there is lack of diligence on the part of the 2<sup>nd</sup> Respondent by failing to Reply to the Memorandum of Appeal.

It is for these reasons that the Tribunal rejects the documents filed by the 2<sup>nd</sup> Respondent and the same are accordingly expunged from the Tribunal record.

It is so ordered.



**Hon. Stephen M. Magoiga – Chairman**



**Hon. Butamo K. Phillip – Member**



**Dr. Theodora Mwenegoha – Member**

**24/5/2019**

Ruling delivered in Dar es Salaam today 24<sup>th</sup> May, 2019 in the presence of Mr. Modestus Njau, Advocate for the Appellant, Ms Glory Francis, Advocate for the 1<sup>st</sup> Respondent and Ms. Wemael Msuya holding brief for Ms. Hawa Lweno, Advocate for the 2<sup>nd</sup> Respondent.



**Hon. Stephen M. Magoiga – Chairman**



**Hon. Butamo K. Phillip – Member**



**Dr. Theodora Mwenegoha – Member**

**24/5/2019**