

IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM



APPEAL NO. 4 OF 2020

FRED JAPHET CHENZAAPPELLANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LTD

(TANESCO)1ST RESPONDENT

ENERGY AND WATER UTILITIE REGULATORY

AUTHORITY (EWURA).....2ND RESPONDENT

JUDGEMENT

The appellant, Mr. Fred Japhet Chenza, aggrieved by the award of the 2nd respondent hereinabove appeals to this Tribunal against the whole decision on the following grounds, namely:

1. That, the 2nd respondent erred in law and fact by making findings based on the evidence of the 1st respondent which is against the principle of natural justice.
2. That the 2nd respondent erred in law by disregarding strong evidence adduced by the appellant on the cause of the fire that destroyed the premises of the appellant for leaving out

some evidence of the appellant and failure to evaluate the same evidence of the appellant.

3. That the 2nd respondent erred in law and facts by making findings that the source of the fire that destroyed the appellant's premises is unknown.

WHEREFORE the appellant prayed for orders that:-

- i. the award and orders of the 2nd respondent be quashed and set aside.
- ii. costs for the Appeal.
- iii. any other relief the Tribunal may deem fit and just to grant.

The briefs facts pertaining to this appeal are that, on 23rd November, 2018 the appellant's house/premises situated at ZZK Mbalizi area in Songwe region was gutted down by fire and all the personal belongings therein were destroyed. The appellant lodged a complaint at Energy and Water Utilities Regulatory Authority (hereinafter to be referred as '**EWURA**') praying for an order that, the 1st respondent pays him Tshs. 420,000,000.00 being compensation for the damaged house and household belongings caused by an overvoltage in the 1st respondent's power supply system. Upon hearing the parties, the complaint was dismissed for want of merits. The appellant being aggrieved with the whole decision of EWURA delivered at Dodoma on 30th day of January

2020 lodged the instant appeal to this Tribunal, hence, this judgement.

Upon being served with the memorandum of appeal, both 1st and 2nd respondents filed replies to the memorandum of appeal as required under Rule 19(1) of the Fair Competition Tribunal Rules, 2012 disputing all the grounds of appeal and according to them, the whole appeal is baseless, unfounded and devoid of any useful merits and prayed that the instant appeal be dismissed with costs.

All parties to this appeal filed skeleton written arguments in support for the appellant and in opposing for both respondents of this appeal in compliance of Rule 28 of the Fair Competition Tribunal Rules, 2012.

When the appeal was called for hearing, the appellant appeared in person and unrepresented ready for hearing. The first respondent had the legal services of Mr. John Kyamani, learned advocate. On the part of the second respondent, had the legal services of John Kyamani, learned advocate holding brief for Ms. Hawa Lweno, learned advocate, with instructions to proceed.

Mr. Fred Japhet Chenza arguing the appeal prayed that his skeleton written arguments together with grounds as contained in the memorandum of appeal be adopted by the Tribunal and considered for the determination of this appeal. The appellant in his skeleton written arguments gave the background of the Appeal. Arguing the first ground of appeal, the appellant argued that, by 1st respondent

investigating the source of fire and consequently holding that the source of fire was unknown, while had interest in the matter was tantamount to be a judge in her own case and as such impossible to hold itself accountable. On the 2nd respondent, the appellant argued that by relying on report by the 1st respondent and defending the 1st respondent on the malfunctioning of the transformer meter and failure of the 1st respondent to submit Power Profile during hearing, the 2nd respondent turned herself into an advocate of the 1st respondent.

On the second ground, the appellant pointed out several errors committed by the 2nd respondent in the determination of the complaint. These are; **one**, that the 2nd respondent erred in law and fact by disregarding strong evidence adduced by the appellant including that wiring of the premise was done by a qualified technician and was approved by the 1st respondent; **two**, that the oral testimony from CW2 who testified that she saw, thrice, sparks coming out of the LUKU meter on the fateful day; **three**, that on the 23rd November 2018 there was **ON** and **OFF** tendency of electricity at ZZK-Mbalizi area which justifies an electrical fault on the system of the 1st respondent on the day; **four**, that on the 23rd November 2018 the transformer meter at ZZK-Mbalizi area was not functioning, as a result the 1st respondent failed to submit power profile as an evidence during hearing; **five**, that the 2nd respondent neglected strong documentary evidence prepared by the Fire and Rescue Force which was submitted by professional

fire investigator who established that, the fire started from meter and system of the 1st respondent; and **six**, that the 2nd respondent disregarded strong evidence that, a meter and a socket breaker were mostly affected, suggesting that the fire started from the 1st respondent's system; and **seven**, that the 2nd respondent relied upon the 1st respondent's Emergency Daily Report as an evidence which does not show any source of fire, all these justifying that the source of the fire that destroyed the house and properties of the appellant was caused by the 1st respondent's electrical system, therefore, it was unfair to hold that the source of fire was unknown.

Arguing the third ground of appeal, the appellant argued that the 2nd respondent erred in law and fact by making its findings that the source of fire that destroyed the appellant's premises is unknown while the appellants evidence and record shows that on the fateful day there were faults on the 1st respondent's electrical system including malfunctioning of the transformer meter at ZZK- Mbalizi area, destruction of Luku meter and socket breaker and failure of the 1st respondent to submit Power Profile all of these justifies that the source of fire is known, that is the 1st respondent's electrical system, hence to hold that the source of fire was unknown is unfair.

On the totality of the above grounds and reasons argued above, the appellant prayed that the Tribunal grant the following orders:-

- a. The entire award appealed against be quashed and set aside.

- b. That the 1st respondent pays the appellant Tshs.420,000,000/= being the compensation of the value of the house (premises) as well as the household therein, goods that were in the hardware shop and cash that was destroyed by fire.
- c. Costs of the appeal
- d. Any other relief that this honourable Tribunal deemed fit and just to grant.

In response, Mr. John Kyamani, learned advocate for the 1st respondent prayed to adopt replies to the memorandum of appeal and the skeleton written arguments by both respondents to be part of their efforts to oppose this appeal. On the first ground of appeal, Mr. Kyamani contended that the argument on natural justice is unattainable as the appellant was informed of the matter fixed for hearing, parties conducted investigation in the scene area which is the appellant's house, the appellant attended the hearing and was heard together with all his witnesses and cross examined witness and was represented by learned advocate, one Ms. Ester Haule. According to Mr. Kyamani all procedures for hearing were observed making this ground baseless.

On the second ground of appeal, it was the response of Mr. Kyamani, learned advocate that, all evidence adduced by parties was considered and well evaluated by the 2nd respondent. According to Mr. Kyamani, no strong evidence was disregarded by the 2nd respondent. Further, Mr. Kyamani pointed out to the

Tribunal that the report tendered during hearing, revealed that the source of fire is unknown. He further pointed out that the alleged report of the Fire Force Fighter was not tendered during hearing and cannot as such form part of the record of appeal and worse still on the part of the appellant never called any witness from Fire Force to support his story and lastly pointed out that even if the report from Fire Force was admitted, still was against the appellant's claim that source of fire was not established.

Mr. Kyamani further argued that power profile information does not establish the source of fire rather it shows whether the transformer was overloaded or not. The absence of such report does not establish source of fire. It was also the response of Mr. Kyamani that appellant had an opportunity to call all his witnesses and bring forth his evidence to establish the source of fire, but he utterly failed to prove source of fire and as such the decision of the 2nd respondent was justified in all fairness.

Further, Mr. Kyamani argued that examination of the fire scene during site visit revealed that the meter and the fire was from the upper roof which negate that the fire started from Tanesco infrastructure. According to Mr. Kyamani, the fire started from the hardware room/store which was completely gutted, however, the window which the meter was close by was intact.

It is therefore the argument of the 1st respondent that all evidence adduced by the appellant and evidence gathered from the scene

were dutifully considered and no strong evidence adduced by the appellant managed to prove any allegations against the 1st respondent.

In response to the third ground, Mr. Kyamani submitted that, the 2nd respondent was correct in deciding that the source of fire was unknown. This decision came after thorough analysis of the evidence on record. No expert report was tendered or even an expert witness from Fire and Rescue Force by the appellant to testify on the source of fire as required by the The Fire and Rescue Act, 2007.

In conclusion, Mr. Kyamani humbly prayed the Honourable Tribunal be pleased to dismiss this appeal in its entirety with costs and issue any other order as it may deem fit and just to grant.

Mr. Kyamani, learned advocate holding brief for Ms. Lweno, learned advocate for the 2nd respondent, prayed for the 2nd respondent's skeleton arguments be adopted by the Tribunal in the determination of this appeal. Basically, the arguments of the 2nd respondent were more or less the same as those of the 1st respondent. Like the 1st respondent, the 2nd respondent prayed that this appeal be dismissed with costs.

In his rejoinder, the appellant conceded that the report from the Fire and Rescue Force was neither tendered by the appellant nor admitted by the 2nd respondent in the course of hearing. However,

reiterate his position that the meter busted and it was the cause of fire.

After summarizing the respective rival arguments of the parties in this appeal, and going through the proceedings and the award of the 2nd respondent is opportune time now to determine the merits or otherwise of this appeal. In so doing, we wish now to consider each ground raised and argued. The first ground was thus couched that the decision of the 2nd respondent was faulted for its findings was based on evidence of the 1st respondent which is against the principles of natural justice. In this ground the appellant argued two limbs; one, was that the 1st respondent investigation on the sources of fire was equal to sitting in her own case and two by the 2nd respondent agreeing to use the report of the source of fire, the 2nd respondent acted as advocate of the 1st respondent. The respondents strongly disputed these allegations.

Having dispassionately considered this ground, we find this ground is devoid of any useful merits. We will explain. **One**, the appellant was fairly heard, given chance to call witnesses and cross-examined witnesses for the respondents, so the argument that he was denied his rights, we find it very misplaced in this appeal. **Two**, the argument on the use of the report of the 1st respondent made the 2nd respondent an advocate to the respondent is equally with no merits. The 2nd respondent was entitled to consider any evidence that was made available for the controversy before it. This report was admitted without objection from the appellant and

as such to turn around and attack the report now amounts to an afterthought on his part. In the case ***NDESAMBURO V. ATTORNEY GENERAL [1997] TLR 137*** it was held that:-

'the principle of natural justice which requires a person to be afforded with opportunity to defend himself necessarily implies that the person determining the matter will consider the party's defense before making a decision which affects the right of such party. Failure to consider such defense is as bad as not affording the party an opportunity of the right of hearing.'

Indeed, it would have been deemed miscarriage of the principle of natural justice if the 2nd respondent had not considered the appellant's defense or given him opportunity to be heard. The Tribunal is of the opinion that, the 1st respondent's submissions and evidence contained in the award of the 2nd respondent is sufficient evidence that the 2nd respondent, did not only give parties an opportunity to present their case but also recorded the evidence given and considered the evidence of both the appellant and the respondent in reaching the decision. This Tribunal is satisfied that there is no breach of principles of natural justice.

Based on the above reasons, we find ground number one unmerited and is dismissed.

One the second ground that the 2nd respondent disregarded strong evidence adduced by the appellant of the cause of the fire that

destroyed the house. We have seriously and industriously considered this ground and the number of said evidence pointed out to have been disregarded, but with due respect to the appellant, we found this ground is equally devoid of any merits. **One**, the said report from Fire and Rescue Report was not tendered nor introduced during hearing before the 2nd respondent and as such it cannot be used now at this stage without following down procedures. **Two**, the oral testimony of CW2 was self-contradicting. At one place she said that she saw sparks coming out of the Luku meter and it happened thrice, but she saw a smoke coming out of the window of the middle room, but more sadly she said at page 5 of the proceedings that:-

“I don’t know exactly the source of fire.”

This statement from the eye witness when considered it cannot be other than that, even CW2 did not know exactly what was the source of the fire. **Three**, testimony of CW1 cannot establish the source of fire because he was not around when the fire started. On the totality of the above reasons, this ground has to fail as well.

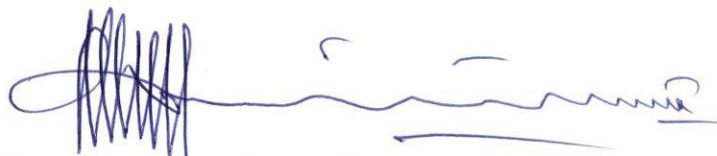
This Tribunal seriously considered the third ground of appeal brought by the appellant that the 2nd respondent erred in law and fact by making its findings that the source of fire that destroyed the appellant’s premises is unknown. Having examined the arguments and evidence adduced by both parties in supporting this ground and after examining the award issued by the 2nd

respondent, the Tribunal is satisfied that the source of fire needed to be established in order to establish liability against the 1st respondent. The evidence tendered to the Tribunal, which is presented at page 19 of the Award granted by the 2nd Respondent, EWURA, revealed that the appellant's witness (CW2) acknowledged that she does not know the source of fire. This is to the effect that the appellant was also not able to adduce the source of fire. The report which the appellant wanted to rely to prove his appeal, the appellant admitted that it was not tendered before EWURA nor its maker called to testify, hence, leaving the source of fire unknown to EWURA and this Tribunal as well. In the circumstances, the Tribunal is forced to agree with the 1st respondent that there is no strong evidence adduced to show the source of fire.

That said and done, this appeal is found devoid of any useful merits and is hereby dismissed in its entirety with no order as to costs given the nature of damages so far caused.

Ordered accordingly.

Dated at Dar es Salaam this 6th day of August, 2020.



Hon. Judge Stephen M. Magoiga – Chairman



Hon. Susan Mkapa – Member



Hon. Dr. Theodora Mwenegoha – Member

Judgment delivered this 12th day of August, 2020 in the presence of Mr. Fred Japhet Cheza present in person, Ms. Hawa Lweno Advocate for the 2nd Respondent and also holding brief for Mr. John Kyamani, Advocate for the 1st Respondent.



Hon. Judge Stephen M. Magoiga – Chairman



Hon. Dr. Theodora Mwenegoha – Member

12/08/2020