



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

**TRIBUNAL APPEAL NO. 23 OF 2020**

**AMIR S. MWAMBA ..... APPELLANT**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY COMPANY LIMITED  
(TANESCO) ..... 1<sup>ST</sup> RESPONDENT**

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

**JUDGMENT**

The appellant, MR. AMIR S. MWAMBA, aggrieved by the award of the 2<sup>nd</sup> Respondent hereinabove, appeals to this Tribunal against the whole decision on the following grounds, namely:

1. The Authority erred in law and facts to hold that it was not the 1<sup>st</sup> Respondent's act of poor quality of supply of electricity which caused fire and consequently occasioned loss to the applicant.
2. The Authority erred in law and fact by failing to evaluate the evidence as given by the complainant and his witnesses.

**WHEREFORE** he prays for orders that:

1. This appeal be allowed and the whole decision of the Authority be quashed and set aside.
2. This Honourable Tribunal be pleased to order that the 1<sup>st</sup> Respondent was responsible for the cause of fire that damaged the property belonging to the appellant in Flat No. 2 Block 116 Kitonga Road Upanga Dar es Salaam.
3. This Honourable Tribunal be pleased to order the 1<sup>st</sup> Respondent to pay damages as prayed in the complaint.
4. Any other relief and order the Honourable Tribunal may deem fit and just to grant
5. Costs of this appeal be provided for.

Upon being served with the memorandum of appeal, both 1<sup>st</sup> and 2<sup>nd</sup> 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. The 1<sup>st</sup> Respondent argued that, the appeal is baseless and devoid of merits and that the same should be dismissed with costs whereas the 2<sup>nd</sup> Respondent argued that the appeal is hopeless, doomed and devoid of merits and that the same should be dismissed.

The brief facts pertaining to this appeal are that on the 14<sup>th</sup> of November 2015, the appellant's apartment situated at Flat No. 2 Plot No. 116 along Kitonga Road Upanga Dar es Salaam caught fire as a result, some properties were destroyed. The appellant lodged a complaint at the Energy and Water Utilities Regulatory

Authority (hereinafter referred to as EWURA) praying for an order that, the 1<sup>st</sup> Respondent pays him:

1. TZS 92,269,073.40 being compensation for restoration of the Flat,
2. TZS 30,000,000/= for compensation of household items,
3. US\$ 9,000.00 for compensation of rent for the tenant, and
4. TZS 40,000,000.00 being damages for psychological torture.

Upon hearing of complaint inter parties, the 2<sup>nd</sup> Respondent dismissed the complainant's claim, hence, this appeal and as such this judgment.

When the appeal was called on for hearing, the appellant, Mr. Amir S. Mwamba was represented by Mr. James Bwana learned advocate. The 1<sup>st</sup> Respondent had the legal services of Ms. Farida Swedi, the learned State Attorney. The Second Respondent enjoyed the legal services of Ms. Irene Nzagi and Mr. Baraka Masora, learned State Attorneys.

Mr. Bwana arguing the appeal was brief by praying that the memorandum of appeal, skeleton written arguments, and list of authorities filed be adopted by the Tribunal and be considered in the determination of this appeal.

In response, Ms. Swedi, learned Attorney for the 1<sup>st</sup> respondent prayed to adopt reply to the memorandum of appeal, skeleton written arguments along with list of authorities and same be considered for determining the appeal and further prayed that the

appeal be dismissed. Ms. Swedi pointed out that, the testimonies of CW2, CW3 and CW4 regarding the cause of fire were inconsistent and contradictory and exhibit C12 concluded that the fire started at main switch which is not part of the 1<sup>st</sup> respondent's infrastructures. The learned State Attorney referred the Tribunal to the decision of the Authority in the case of **MAVURA MOHAMED MSUYA FOR AND ON BEHALF OF WAKAZI SITA WA BUZA VS TANESCO**" IN COMPLAINT NUMBER **GA.71/135/151** on Page 6 where it was held that "according to the technical opinion, the presence of sparks on a bracket or pole suggests the presence of loose connection fault, which is a localized fault meaning sparks from loose connection cannot be transported to other areas of the house and cause effect unless they are in close contact with fire accelerators such as petrol, fuel or gas. The only known effect of loose connection is for a customer to lose power supply."

Ms. Swedi when probed by the Tribunal as to whether the decision of the Authority is binding to this Tribunal readily admitted that it is not but it can persuade us on the point.

Ms. Swedi went on to submit that the responsibility of the 1<sup>st</sup> Respondent ends at the meter as stipulated in the Customer Service Manual. The learned attorney pointed out that an officer from the Fire Brigade CW4, who participated in putting out the fire, along with exhibit C12, found and concluded that the fire started at the main switch. The main switch is not part of the 1<sup>st</sup>

Respondent's infrastructure and further that no evidence was given that the fire started in the meter. In this respect, the evidence of the appellant was contradictory and inconsistent as to the source of the fire.

Ms. Swedi challenged the testimony of CW2 by arguing that same was not consistent when he said he saw sparks at the pole. On another occasion, he stated that there was heavy burning at the fridge area inside the house and indeed, the fridge was heavily burnt. The learned Attorney referred us at page 106 of the Record of Appeal.

According to Ms. Swedi, the evidence by the appellant was contradictory and inconsistent in each respect. The source of fire was not on the infrastructure of the 1<sup>st</sup> Respondent, hence, the 2<sup>nd</sup> Respondent was correct when he held that the source of fire was not from the infrastructures of the 1<sup>st</sup> Respondent because other flats tapping from the same point of the pole were not affected. The infrastructure of the 1<sup>st</sup> Respondent were intact including the LV Line as stated on page 162 of the Records of Appeal.

On argument that TANESCO did not submit its report, it was the submission of Ms. Swedi that, it was not necessary because the report of the Fire Brigade was enough and it was from an independent organ specialized in fire incidents. CW2 claims to have instructed neighbours in different nearby flats to switch off

their main switch and not the affected flat, no evidence was, however, provided to support this claim that neighbours in nearby flats were instructed by CW2 to switch off their main switch. The learned Attorney for the reasons given above prayed to this Honourable Tribunal to dismiss this appeal with costs for want of merit.

On behalf of the 2<sup>nd</sup> Respondent Mr. Masora told the Tribunal that they filed their reply to the memorandum of appeal but did not file the skeleton arguments in the place of which he proceeded with an oral submission. He disputed the appeal as the decision of the 2<sup>nd</sup> Respondent was based on evidence presented by the parties. He proceeded by saying that the source of fire, as per page 189 read with page 5 of the Records of Appeal, the fire started at the main switch. Mr. Masora went on to point out that at page 191 of the record of appeal, the evidence provided by CW4 points that the fire started at the main switch.

However, on the contrary, the skeleton written argument filed by the appellant, at page 3 is misleading as it says that the fire started at the meter and that this was the finding of the Authority (2<sup>nd</sup> Respondent). Mr. Masora made it clear before the Honourable Tribunal that this was not 2<sup>nd</sup> Respondent's finding but rather the appellant's own submission which cannot be a basis of the decision.

It was Mr. Masora's strong submissions that, the 2<sup>nd</sup> respondent's decision was based on appellant's witnesses who are: CW-1 whose testimony was completely hearsay, CW-2 who was present but his testimony was to the effect of seeing sparks on the pole and reporting the incident to TANESCO, but no other evidence was advanced by him. CW3, a Professional Electrical Engineer who was hired by the appellant after one year from the date of the incident with intent to contradict the report of the Fire Brigade. His findings (CW3) were further not corroborated with any other evidence, hence, rendering his evidence not impartial or reliable. CW4 from the Fire Brigade evidence adduces that the fire started from the main switch as per page 140 of the Record of Appeal.

Mr. Masora pointed out that in this respect, the appellant has two reports that contradict each other. CW2 on page 132 of the Record of Appeal believes the source of fire is sparks he saw at the pole; CW3 believes the source of fire is a meter and CW4 believes the source of fire is the main switch.

Mr. Masora on serious note went on to challenge the appellant's appeal in the sense that, the distance between the sparks at the pole and the affected house or flat is about 20 meters (in some other parts of the Records of Appeal this distance is said to be between 30 to 50 metres). Sparks from a pole could not have caused fire to a Flat or house 20 meters or more away unless there are combustible supporting materials like fuel, gas or

petrol. The leading cable was intact as per page 151 and 156 of the Records of Appeal. The tapping point at the pole that connected electricity to Flat No.2 had other flats connected to it, which were not affected as per page 134 of the Records of Appeal, hence no power surge in the circumstance and no bulb was even reported to have been damaged in these other flats.

On the above note, Mr. Masora concluded that the available evidence indicates that there was no problem with the quality of electricity supplied by the 1<sup>st</sup> Respondent. The meter to Flat No.2 was not damaged, only the plastic cover was burnt showing that the source of fire was the main switch and not the meter. In the circumstances, Mr. Masora urged this Tribunal to find the first ground advanced by the appellant in this appeal devoid of any useful merits.

On the second ground, Mr. Masora submitted that there was enough analysis of evidence performed by the 2<sup>nd</sup> Respondent as opposed to what the appellant alleges. He referred the Honourable Tribunal to pages 207-212 of the Records of Appeal.

In the conclusion, the learned Attorney urged this Tribunal to dismiss this appeal.

In rejoinder, Mr. Bwana affirms the absence of CW1 during the fire incident. He further agreed that CW3 performed the inspection in Flat No. 2 more than one year later but extended his argument to the fact that even the visit to the *locus in quo* was



undertaken about five years later after the date of the fire incident. Nevertheless, he insisted on the occurrence of sparks at the pole connecting power to Flat No. 2 causing unusual power fluctuations on the fateful date of 14<sup>th</sup> November 2015 and that the slight inconsistencies noted amongst evidence of CW2, CW3 and CW4 constitute normal occurrence allowed by the law.

On the claim that other occupants in neighbouring flats sharing the same power supply connection point with Flat No. 2 did not lodge any complaints regarding power supply fluctuations and or damages of equipment and or properties on the fateful day when fire incident occurred in Flat No. 2, Mr. Bwana argued in rejoinder that the same cannot be used as a basis for not holding the 1<sup>st</sup> Respondent liable as the magnitude of the damage for each occupant was different.

On the lead-in cable connecting Flat No. 2 from the electric pole that was alleged to have been sparking and which was sought to be the transmitter of the fire from the pole to Flat No. 2, Mr. Bwana argued that the same were burnt but later on changed by the time of visitation of the *locus in quo*. The learned Advocate continued arguing that TANESCO's report on the fire incident was vital but the same is missing, though when probed by the Tribunal admitted that it was the appellant who objected the submission of this report as part of the evidence on grounds of "the report not being on the TANESCO headed paper and as not

signed and stamped" as referred in page 164 of the Records of Appeal.

The learned Advocate for the appellant prayed that this appeal be considered and be allowed with costs as prayed.

After summarizing the respective arguments of the parties in this appeal and going through the proceedings and the award of the 2<sup>nd</sup> respondent, the noble task of the Tribunal now is 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 couched that the 2<sup>nd</sup> Respondent erred in law and facts to hold that it was not the 1<sup>st</sup> Respondent's act of poor quality of supply of electricity which caused fire and consequently occasioned loss to the applicant. In this ground the appellant argued that the fire was caused by the poor quality of the 1<sup>st</sup> Respondent's infrastructures. On the contrary, both respondents join hands that the fire started at the main switch which is outside the infrastructure and of the 1<sup>st</sup> Respondent obligation.

Having dispassionately considered this ground along with the rivalling arguments of parties, we unreservedly find it weak and devoid of any useful merits. Our stance is abounding several reasons. **One**, the appellant witnesses as correctly argued by respondents and rightly so in our own view, provided inconsistent and contradictory statements with regard to the actual cause of

fire as evidenced by CW-1, CW-2 and CW-3 thus lack corroboration. The inconsistency in summation gives a clear indication that the source of fire was not the sparks from the poles as the same could not in any way be a cause of fire given the distance between the pole and the appellant's flat adding to the absence of combustible materials to transport the spark from its source. **Second**, the technical report by the Fire and Rescue Unit and that of CW4 relied on by the appellant were also contradictory and that of CW4 was not useful to reveal the exact source of fire in the circumstances.

On that note, we find ground number one devoid of any useful merits and same is dismissed for want of evidence.

On the second ground that the Authority erred in law and fact by failing to evaluate the evidence as given by the complainant and his witnesses, we have seriously and industriously considered this ground but with respect to the appellant, this ground will not detain us much and is akin to fail. The main reason we take the above stance is that, as rightly argued and pointed by Mr. Masora and not even rebutted by the learned counsel for the appellant in rejoinder the 2<sup>nd</sup> Respondent at pages 207 to 212 of the loud and clear record is clear and loud that they analysed all evidence and came to conclusion out of that analysis. A mere assertion that no analysis was done is not backed up by record. Equally important to note, at the page 2 of the skeleton arguments by the appellant it is submitted that, we beg to quote him verbatim:

**“the core of the decision of the 2<sup>nd</sup> respondent is found at pages 207 -213 of the record of appeal, while addressing the 1<sup>st</sup> issue at the trial, the 2<sup>nd</sup> respondent made analysis of evidence testified by all witnesses.”**

The above quotation is an admission that the 2<sup>nd</sup> Respondent did his job well as such cannot be accepted that the 2<sup>nd</sup> Respondent did not make analysis of the evidence tendered. This point on the above findings has to fail as well.

On the totality of the above reasons, this Tribunal finds and hold that the instant appeal is devoid of any useful merits and is hereby dismissed with costs to the 1<sup>st</sup> respondent.

It is so ordered.

Dated at Dar es Salaam this 7<sup>th</sup> day of February, 2022.



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

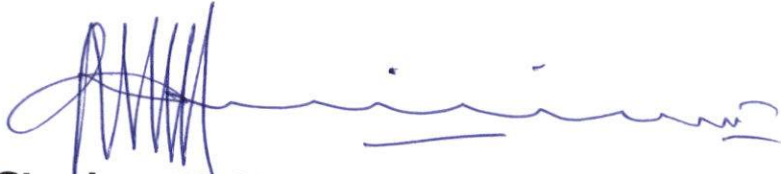


**Dr. Hanifa Massawe – Member**



**Eng. Boniface G. Nyamo-Hanga – Member**

Judgment delivered this 2<sup>nd</sup> day of March, 2022 in the presence of Mr. Emmanuel Ally Advocate for the Appellant, Baraka Masora State Attorney for the 2<sup>nd</sup> Respondent and in the absence of the 1<sup>st</sup> Respondent.

A handwritten signature in blue ink, appearing to read 'Stephen M. Magoiga', with a stylized, somewhat abstract initial 'S'.

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

**Dr. Hanifa Massawe – Member**

A handwritten signature in blue ink, appearing to read 'Boniface G. Nyamo-Hanga', with a stylized initial 'B'.

**Eng. Boniface G. Nyamo-Hanga – Member**

**02/03/2022**