FAIR COMPETITION TRIBUNAL

CASE DIGEST

2007 - 2020

FOREWORD

The Fair Competition Act No. 8 of 2003 establishes Fair Competition Tribunal (FCT) and gives it powers to hear and determine appeals; issue warrants; carry out the functions conferred on it under any other written law and exercise such other functions and powers as are conferred upon it. The territorial jurisdiction of FCT is within Tanzania Mainland.

FCT is the highest decision-making institution with regard to competition and economic regulation matters that are dealt with/regulated by Regulatory Authorities namely Energy and Water Utilities Regulatory Authority (EWURA), Tanzania Communications Regulation Authority (TCRA), Tanzania Civil Aviation Authority (TCAA), Land Transport Regulatory Authority (LATRA previously known as SUMATRA) and Petroleum Upstream Regulatory Authority (PURA). FCT is also the highest decision-making institution with regard to competition, consumer protection and counterfeit matters dealt with the Fair Competition Commission (FCC).

FCT began operating in November 2006 and handed its first decision on 12th March, 2007. Since its first decision, FCT has produced notable jurisprudence which has brought clarity to the ambit of law it deals with. Although in the early times of FCT, cases received were relatively few (2 cases in 2007, 4 cases in 2008 and 2009, 7 cases in 2010), the number continue to increase following initiatives taken by both the Parent Ministry (Ministry of Industry and Trade), FCT, Regulatory Bodies and FCC to raise awareness of the public, business community and other stakeholders on competition, consumer protection and regulatory policy and legal regime.

Appeal cases received by FCT are those dealing with anti-competitive business practices, mergers and acquisitions, counterfeit, tariff setting, regulation of licensed suppliers, consumers welfare and related matters. As such FCT is a multidisciplinary institution which combines expertise in economics and business with expertise in law.

PURPOSE OF THE DIGEST

This digest is aimed to provide a summarized jurisprudence which shows the *sui generis* approach of FCT in ensuring a healthy markey economy. It summarises cases in order to demonstrate FCT's approach to appeal cases in its efforts to ensure order in the market places aimed at consumer welfare protection and enhancement. It does not serve as a book of precedents but merely a guide to members, officers, students, researchers, practitioners and the public at large.

DISCLAIMER

This digest comprising of selected cases decided from 2007 to 2020. It is not a definitive guide on competition law and economic regulation cases, neither are cases summarised here exhaustive; thus, should serve as a general guide.

Even though every effort has been made to make this digest as accurate as possible, it may still contain errors and omission.

CASE DIGEST

1. JUMA MPUYA V. CELTEL – APPEAL No. 1/2007

Interlocutory matter raised by the Tribunal *suo motu* on 28.2.2007 on whether the appeal was properly before the Tribunal. The Tribunal's jurisdiction as spelt out under s. 85 of FCA No. 8 of 2003 and guided by s. 36 (1) of TCRA Act No. 12 of 2003 provides for appeals originating from the decision of the Authority; it does not expressly make reference to a complaint committee which made the decision appealed against.

DECISION (Hon. Kalegeya, L.B., Mbene, J., Njau, J., Prof. Kironde, J.M.L., Kibodya, F. - 12.03.2007):

i. Tribunal is disadvantaged by the lack of facts surrounding "Committee of Authority" especially on its appointment and extent of its mandate.

ii. Decision appealed against is the decision of the Committee of the Authority thus, appeal is proper.

2. JUMA MPUYA V. CELTEL – APPEAL No. 1/2007

Appeal against a decision of TCRA filed on 2.2.2007. The appellant claimed for damages caused by the disruption of mobile phone services and allocation of SIM Card number to another customer by the respondent. TCRA found that the respondent was negligent in re-allocating the appellant's line to another customer and ordered the respondent to pay compensation.

DECISION (Hon. Kalegeya, L.B., Mbene, J., Njau, J., Prof. Kironde, J.M.L., Kibodya, F. - 20.03.2007):

i. In any case, if copies of proceedings are non-existent appeal would not be lacking in format if lodged without such proceedings. Tribunal may proceed and determine an appeal in which copies of proceedings

have not been filed if they are not necessary for the just determination of the said appeal.

ii. On the award, the Tribunal found that TCRA underestimated the travelling expenses and per diem costs awarded to the Appellant. The Tribunal also found that the Appellant did not prove any monetary or particular loss he suffered due to the disruption of his telephone line and went ahead to award general damages amounting to Tshs. 1.5M due to negligence of the Respondent.

Appeal partly allowed.

3. TICTS V. SUMATRA & SUMATRA CCC – APPEAL NO. 3/2008

Preliminary objection to the appeal by the respondents on the ground that the appellant lacks *locus standi* to pursue an appeal since he was not a party in the original application filed by TPA determined by respondent.

DECISION (Hon. Sheikh, R., Kibodya, F., Prof. Kironde J.M.L. - 19.9.2008):

i. Although "any person" has been limited to those involved in the original matter, FCA fundamental objectives requires a broader interpretation to include a provider or consumer affected and aggrieved by a decision of a regulator.

ii. The appellant's interests are recognized by the respondent when conducting hearing thus, was a necessary party to the inquiry and can appeal against the decisions.

iii. Appellant had no other avenue for pursuing its interests and could not file application for intervention as no appeal was filed by another person.

Objection overruled with costs.

4. DAWASA V. EWURA – APPEAL NO. 1/2008

Appeal against a decision of EWURA filed on 25.04.2008. In 2005 DAWASA entered into a Lease Agreement with the Dar es Salaam Water and Sewerage Corporation (DAWASCO) to operate and maintain a water and sewerage system in the DAWASA Designated Area. In January, 2008 the appellant submitted an application for a tariff increase of 22% for water supply and 18.5% for sewerage services effective from 01/01/2008. The proposal for the tariff increase was based on the recent increase in electricity costs and the prevailing inflation. After seeking information from DAWASA and considering the application, EWURA disallowed the application in its decision dated 08/04/2008 after it had found the tariff increases sought by the appellant unreasonable and unenforceable.

DECISION (Hon. Sheikh, R., Njau J. A., Prof. Kironde J.M.L. - 26.09.2008):

- **i.** EWURA had followed due process in arriving at the decision and a public inquiry was duly held.
- **ii.** When determining tariffs, EWURA is not only empowered but required to take into consideration factors other than the lease agreement between the appellant and another party.
- **iii.** It would be unreasonable to overburden customers with high tariffs arising from the inefficiency of the parties of the lease agreement and laxity in collection of bills by the lessor.
- **iv.** Mere projections cannot be a basis or a factor for disallowing the tariff increase.
- **v.** Performance targets set in the lease agreement form a basis or a factor in determining tariff applications.
- **vi.** The appellant having failed to submit a methodology used for assessing the consumption by unmetered consumers, cannot fault EWURA's decision that the requested flat rate tariff increase is unenforceable.

vii. EWURA as the Regulator is empowered under DAWASA Act, EWURA Act and the Lease Agreement to supervise the appellant and the lessor.

Appeal dismissed with costs and appellant ordered to comply with EWURA's orders.

5. LUCAS MALLYA V. MABIBO BEERS, WINES & SPIRITS LTD, & TRA – APPEAL NO. 2/2008

Appeal against a decision of FCC filed on 22.05.2008

The appellant complained before FCC that respondents had violated competition law by restraining the importation of Heineken Beers in Tanzania from any other person other than the first respondent who had an exclusive agreement to import, distribute and market Heineken Beers in Tanzania with the manufacturer. FCC responded by a letter that the issue of exclusivity complained of was a matter/arrangement between the 1st respondent and the producer/proprietor of Heineken beer and that FCC did not, for that reason, have jurisdiction to entertain or deal with the complaint hence this appeal.

DECISION (Hon. Sheikh, R., Shah, R., Makani, V. - 29.09.2008):

i. The appeal is fit for the consideration by the Tribunal and properly lodged before the Tribunal.

ii. The grounds of appeal are sound for consideration by the Tribunal and it is only upon hearing the appeal on merit can it be determined by this Tribunal whether or not the allegations and the grounds of appeal have merit.

Appeal to proceed on merit.

N.B: Upon an application for revision before CAT it was held that FCC had infringed natural justice by not hearing parties before deciding it had no jurisdiction to deal with the complaint thus proceedings and decision of FCT

were nullified and the complaint was ordered to be heard afresh. CIVIL APPLICATION NO. 160/2008 (Munuo, Kimaro, Mbarouk J.A.)

6. VODACOM V. TCRA & SIX TELECOMS – APPEAL NO. 2/2007

Preliminary objection to the appeal by the intervener Six Telecom on the ground that the appeal has been overtaken by events after publication of G.N. No. 258 of 28-12-2007 and that after the publication of G.N. No. 258 Determination No. 2 of 2007 appealed against had become law, that the Tribunal lacks jurisdiction to review laws for purposes of setting aside or nullifying the same, power which is vested in the High Court of Tanzania.

DECISION (Hon. Sheikh, R., Dr. Shah, R., Kibodya, F. - 03.10.2008):

- **i.** Clearly G.N. No. 258 is a publication of the rates set out in Determination No. 2 of 2007 and the appeal does not seek to nullify G.N. No. 258 as the appeal was filed a day before the G.N. was to become operational which upon its filing had the effect of staying coming into operation of the G.N.
- **ii.** G.N. No. 258 is the publication of rates and is not the determination of the regulator after inquiry envisaged by the rules.
- **iii.** In the event the determination is found improper and rates unlawful, the Tribunal may vary, reverse the determination and make any necessary appropriate consequential orders with regard to the legality or otherwise of G.N. No. 258 and/or order the regulator to amend the G.N. notwithstanding that the Tribunal has no powers to nullify subsidiary legislation.
- **iv.** The practice by the regulator of issuing both determination and G.N. on the same day would deny an aggrieved party the statutory right to appeal and oust powers of the Tribunal.

Objection overruled and dismissed with costs.

7. TICTS V. SUMATRA & SUMATRA CCC – APPEAL NO. 3/2008

Appeal from a decision of SUMATRA filed on 19.08.2008

Tanzania Ports Authority submitted to SUMATRA, on its own behalf and on behalf of TICTS, the appellant, an application for an upward revision of tariffs charged for storage and removal of containers at the Dar es Salaam Container Terminal alleging that the tariff increase was intended to alleviate the congestion problems at Dar es Salaam port and discourage shippers from turning the port into a storage area. After evaluating the application and holding a public inquiry, SUMATRA basically made a finding to the effect that the tariff increase proposal was unjustifiably high and uncompetitive and gave extensive directives for the increase of tariff scales which were effectively less than the requested scales.

DECISION (Hon. Sheikh, R., Kibodya, F., Prof. Kironde J.M.L. - 29.12.2008):

- **i.** SUMATRA had followed due process in arriving at the decision and a public inquiry was duly held
- **ii.** Raising tariffs, in itself, is not the solution to the congestion problem at the Dar es Salaam Port as there are other factors which contribute to the aforesaid congestion other than the dwell time thus the reason given for the tariff increase in the TPA letter of application not very persuasive.
- **iii.** The order complained about cannot be faulted as SUMATRA needs to consider investor/consumer interest and the desire to promote the competitiveness of the rates of Dar es Salaam Port in comparison to, e.g., Mombasa Port, and attract the market.
- **iv.** It is discriminatory to penalize the consignees for late collection of their cargoes whereas TICTS, the service provider, is not similarly obliged to compensate ready and willing consignees for late delivery of cargoes for reasons attributable to TPA/TICTS. Thus, SUMATRA ordered to make rules for charging/granting a penalty/compensation

related to delays in delivery or taking delivery of cargoes at the Dar es Salaam Container Terminal at Dar es Salaam Port.

Appeal dismissed with costs.

8. IRFAN M. DINANI V. ZANTEL – APPLICATION NO. 9/2008

Application for extension of time to file notice of appeal against the decision of TCRA. Ground adduced in support of the application was that the applicant had to travel overseas.

DECISION (Hon. Sheikh, R., Prof. Kironde J.M.L., Dr. Bundara, M., - 04.05.2010):

i. Enabling rule in the FCT rules was not cited, however the omission was disregarded in the spirit of rule 28(2) FCT rules 2006 which requires the Tribunal to avoid formality with a view to ensure justice.

ii. Applicant made reasonable efforts to pursue the matter thus, sufficient to grant the application for extension of time.

iii. TCRA should be joined as a party to the intended appeal as it is a necessary party.

9. ORYX V. EWURA – APPEAL NO. 1/2010

Appeal against a decision of EWURA filed on 29.01.2010. As part of routine checkup of the quality of petroleum products sold or offered for sale in the country, the respondent sent an inspector to inspect a depot in Moshi owned and operated by the appellant who took three (3) samples of three petroleum products from different storage tanks. After testing the samples, EWURA found one sample had low RON which did not meet the standard approved specifications of TBS. EWURA issued a compliance order to the Appellant to show cause, the appellant responded with different findings and requested retesting. EWURA did not respond to the appellant's concerns but ordered the appellant to close the depot for 12 months and pay fine of Tshs 10M.

DECISION (Hon. Sheikh, R., Kibodya, F., Prof. Kironde J.M.L. - 07.05.2010):

i. Non-delivery of the Sampling Procedure Guidelines setting out the procedure as well as the rights and obligations of the Regulator and a Regulated Supplier during the entire sampling and testing process to the appellant as required by the rules had put the appellant at a disadvantage and occasioned grave injustice to the appellant.

ii. Failure to communicate the results of the sample tests to the appellant within fourteen days is a breach which cannot be disregarded.

iii. The omission to conduct a re-test is not only a contravention of the mandatory provisions of the rules but also, denied the appellant the right to have the test conducted in its presence, thus a breach of the rules of natural justice since the omission is basically a denial of the appellant's right to be heard.

iv. EWURA was not empowered to order the closure of the Moshi Depot for twelve months even had the offence been proved.

v. It was improper to impose penalty retrospectively from the date of obtaining the first test results.

vi. The regulatory authority is expected to act in an exemplary manner. In order to regulate a regulator must himself be in full compliance with the law, rules and regulations and ensure the highest standards of efficiency and competence in order to attain the objectives of the intended regulation. It would indeed be a fallacy and unjust to condone the lapses by a regulator in observing the rules while at the same time penalizing a regulated supplier for an alleged offence under the same rules. Such conduct would surely amount to an application of double standards.

vii. EWURA ordered to release the Moshi Depot, save for the disputed storage until appropriate action to immediately correct or dispose of the alleged non-conforming product is taken.

Appeal allowed with costs and orders of EWURA quashed.

10. BP TANZANIA LIMITED V. EWURA – APPEAL NO. 2/2010

Appeal against a decision of EWURA filed on 29.01.2010. As part of routine checkup of the quality of petroleum products sold or offered for sale in the country, the respondent sent an inspector to inspect a depot in Moshi owned and operated by the appellant. After testing the samples taken from the depot petrol conformed to TBS specifications but diesel did not. The appellant independently tested the sample and found that even diesel conformed to TBS specifications. The respondent ordered the appellant to close the depot for 12 months and pay fine of Tshs 10M.

DECISION (Hon. Sheikh, R., Kibodya, F., Prof. Kironde J.M.L. - 07.05.2010):

i. Non-delivery of the Sampling Procedure Guidelines setting out the procedure as well as the rights and obligations of the Regulator and a Regulated Supplier during the entire sampling and testing process to the appellant as required by the rules had put the appellant at a disadvantage and occasioned grave injustice to the appellant.

ii. Failure to communicate the results of the sample tests to the appellant within fourteen days is a breach which cannot be disregarded.

iii. The omission to conduct a re-test is not only a contravention of the mandatory provisions of the rules but also, denied the appellant the right to have the test conducted in its presence, thus a breach of the rules of natural justice since the omission is basically a denial of the appellant's right to be heard.

iv. It was improper to impose penalty retrospectively from the date of the Compliance Order as punishment is imposed upon an offence being established.

v. The regulatory authority is expected to act in an exemplary manner. In order to regulate a regulator must himself be in full compliance with the law, rules and regulations and ensure the highest standards of efficiency and competence in order to attain the objectives of the intended regulation. It would indeed be a fallacy and unjust to condone the lapses by a regulator in observing the rules while at the same time penalizing a regulated supplier for an alleged offence under the same rules. Such conduct would surely amount to an application of double standards.

Appeal allowed with costs and orders of EWURA quashed.

11. GREAT WALL TRADING V. CHIEF OF MERCHANDISE MARKS AT FCC – APPEAL NO. 2/2009

Appeal against the decision of the Chief Inspector of Merchandise Marks at the Fair Competition Commission filed on 30.06.2009. The appellant's electrical goods, which were suspected to be counterfeit goods, were seized by FCC thereafter the appellant was summoned to appear before the Chief Inspector to answer charges of importing and selling goods in contravention of the Merchandise Marks Act 1963 as amended. Despite of his defense that the seized goods were not counterfeits, FCC found that the goods do not satisfy the law as to qualify their circulation into Tanzania market thus, the appellant appealed.

DECISION (Hon. Sheikh, R., Dr. Bundara, M., Prof. Kironde J.M.L. - 30.09.2010):

i. DG of FCC having been appointed as the Chief Inspector by the Minister must hear and decide cases unless he delegates his powers in accordance with the Law.

ii. Mediation procedure adopted by FCC in dealing with the matter was unlawful as there is no any legal provision in the Act or regulations permitting such a procedure.

iii. It was improper for the Chief Inspector to make a final decision based on the unlawful mediation and without following the procedure laid down in the regulations.

iv. Chief Inspector ordered to conduct fresh proceedings in accordance with due process and procedure.

Appeal allowed and decision quashed.

12. TANROADS V. GLOBAL OUTDOOR SYSTEMS (T) LTD & OTHERS – APPEAL NO. 4/2009

Preliminary objection to the appeal by the respondents raised on 18-12-2009 on the ground that the notice and memorandum of appeal are incompetent and defective and the decision, being an interlocutory decision, is not appealable.

The appeal was against a decision of the FCC filed on 24.11.2009 in which respondents who are advertising companies complained before the FCC that the appellant had granted exclusive permits to only two local advertising firms and revoked the permits of all the respondents and ordered them to remove their billboards from the road reserve areas, without having regard to their investment certificates which had granted them permission to invest in the advertising business in the country. The appellant raised an objection that FCC did not have the jurisdiction to deal with the Complaint. FCC dismissed the objection with costs thus the appeal to the Tribunal.

DECISION (Hon. Sheikh, R., Dr. Bundara, M., Kasonda, P. - 18.10.2010):

i. Appellant must assist the Tribunal by specifying all the names and addresses of the Respondents.

ii. Any objection against the notice of appeal is supposed to be made by way of an application not preliminary objection

iii. Although there was an irregularity in the memorandum of appeal the said irregularity is not fatal and has not occasioned any injustice to the Respondents, and may be cured by amendment.

iv. FCA and FCT Rules are silent on appeals from decisions made on interlocutory matters in which case the practice in the Court of Appeal should be followed.

v. It is not permissible to appeal against a preliminary or interlocutory decision or order unless the said decision or order has the effect of finally determining the case before the court.

Objection partly sustained; appeal dismissed with costs.

13. NEW MSIMBAZI KEROSENE COMPANY LTD V. EWURA – APPEAL NO. 3/2010

Appeal against a decision of EWURA filed on 10.05.2010. In February 2009 the Ministry of Lands discovered that the Appellant had built a petrol station in a residential/commercial area contrary to Urban Planning Laws and fined the appellant. The Appellant then applied for change of land use and was given a conditional approval. In January, 2010 EWURA refused an application for a petroleum retail license by the Appellant because EWURA was informed by the Ministry that the Appellant had failed to comply with the conditions for the approval of change of land use from residential/commercial to petrol station within the time given by the Ministry, hence the conditional approval for change of use was revoked.

DECISION (Hon. Sheikh, R., Dr. Bundara, M., Kasonda, P. - 20.10.2010):

i. Party must seek leave to amend the Memorandum of Appeal when wanting to introduce new grounds of appeal and not raise new grounds at the time of hearing.

ii. The approval of change of land use is effective when the approval is granted by being endorsed on the Certificate of Occupancy and signed by the Commissioner for Lands.

iii. EWURA is required to consider, among others, the approved land usage when evaluating petroleum license applications.

Appeal dismissed.

14. VODACOM V. TCRA & SIX TELECOMS – APPEAL NO. 2/2007

Appeal against a decision of TCRA filed on 31.12.2007. By G.N. No. 247 of 14th December 2007, TCRA gave notice to the general public of its intention to hold an inquiry for the purpose of reviewing the cost-based interconnection rates applied among the telecommunication operators. The inquiry was duly held and on 27th December 2007 TCRA issued Interconnection Determination No. 2 of 2007. TCRA informed the telecommunication operators of the decision reached on the interconnection rates and G.N. No. 258 was published, setting out the rates which were determined by TCRA and the effective date for the new rates to be 1st January 2008. The appellant was aggrieved with the decision of the respondent in the Determination hence the appeal.

DECISION (Hon. Sheikh, R., Juma, A., Kibodya, F. - 21.04.2011):

i. In the absence of interconnection agreements among the network service providers it was lawful and proper for TCRA, as the regulator, to determine the interconnection rates.

ii. A resolution and minutes of a meeting of the Board of Directors of the TCRA sufficiently proves that the Determination was duly approved; unless fraud is alleged, a board resolution is conclusive proof that the Determination was approved.

iii. The appellant was afforded sufficient notice and adequate opportunity to be heard during the whole inquiry process before issuance of the Determination.

iv. Regulatory authority must act in an exemplary manner by complying with the laws and maintain the highest standards of efficiency and competency. TCRA ordered to comply with regulation 5 by issuing the required interconnection negotiation procedure and guidance.

Appeal partly allowed.

15. TBL V. SBL, FCC & COCA COLA – CONSOLIDATED APPEAL NO. 4 & 5/2010

Preliminary objection to the appeal by the FCC on the ground that the notice of appeal is bad in law, the appeal is *sub-judice*, bad in law for mis-joinder of parties, contravenes principles of natural justice, bad for duplicity, is vexatious, frivolous, and an abuse of process.

The appeals were against a decision of FCC both filed on 27.05.2010 in which SBL complained before the FCC that TBL was engaged in unfair trade practices which were restricting/harming competition in the beer industry. TBL cross-complained that SBL had been using crates and bottles belonging to TBL in the market. FCC investigated and found that the arrangements between TBL and SBL on the usage of certain crates and the circulation of euro bottles were anti-competitive agreements as against each other and therefore unlawful and found TBL had seriously infringed the Fair Competition Act (FCA) No. 8 of 2003 by entering into branding agreements which had led automatically to serious and important distortions of competition in the beer market in Tanzania.

DECISION (Hon. Sheikh, R., Prof. Kironde J.M.L., Dr. Bundara, M. - 18.08.2011):

i. FCC was joined after the Tribunal had ordered the appellant to do so and as such no need for a fresh or amended notice of appeal

ii. *Sub-judice* rule is not applicable to proceedings before the Tribunal in the light of rule 20 of the FCT Rules, 2006

iii. FCC is a necessary and proper party in any appeal arising from its own decision whether made upon a complaint or investigation initiated by itself.

Objection overruled.

16. SHAYAAN FILLING STATION V. MAHERI W. SOGONE & EWURA - APPEAL NO. 6/2011

Preliminary objection to the appeal by the 1st respondents on the ground that the appeal is bad in law since notice of appeal was lodged out of time and memorandum of appeal lacks endorsement of an advocate.

The appeal was against a decision of the EWURA filed on 7.06.2011 in which the appellant was ordered to pay general damages amounting to Tshs. 2M to the 1st respondent.

DECISION (Hon. Sheikh, R., Dr. Bundara, M., Kibodya, F. - 09.09.2011):

i. Appeal is incompetent for being filed out of time without seeking extension of time.

ii. If an instrument is prepared and signed by a party himself no endorsement is required; endorsement is necessary only where an instrument is prepared by unqualified person for a fee or gain.

Appeal struck out.

17. TBL V. SBL, FCC & COCA COLA – CONSOLIDATED APPEAL NO. 4 & 5/2010

Interlocutory application by the appellant for leave to adduce additional evidence by calling witnesses and expert witness on economic and competition law; and disclosure of documents in the possession of FCC relating to the appointments of FCC members to establish that FCC was properly constituted at the time the complaint was heard and DECISION.

DECISION (Hon. Sheikh, R., Prof. Kironde J.M.L., Dr. Bundara, M. - 14.9.2011):

i. Judicial notice of laws is required to be taken by Courts/Tribunal thus, expert witness on laws is not required. Expert witness is required only when the Tribunal has to form an opinion upon a point of foreign law, science or art.

ii. Even though FCT rules 2006 do not provide for disclosure of documents, whether FCC was properly constituted or not is a material and relevant factor in the context of ground 2 thus, in the interest of justice FCC is ordered to disclose and produce required documents.

Application granted.

18. TANESCO V. EWURA – APPLICATION NO. 3/2011

Application for extension of time to file notice of appeal against the decision of EWURA abolishing special staff rate for TANESCO staff. Ground adduced in support of the application was that TANESCO had to consult a trade union and the procedure of convening a joint meeting delayed the process.

DECISION (Hon. Sheikh, R., Prof. Kironde J.M.L., Dr. Bundara, M. - 15.09.2011):

i. The decision to appeal could not have been made by applicant's management alone and reasonable steps were taken to convene a joint meeting, thus sufficient ground to grant the application sought.

19. TBL V. SBL, FCC & COCA COLA – CONSOLIDATED APPEAL NO. 4 & 5/2010

Interlocutory application by the appellant for leave to argue ground 2 of appeal first before other grounds as it deals with issues of law which if disposed of first the entire appeal may be disposed.

DECISION (Hon. Sheikh, R., Prof. Kironde J.M.L., Dr. Bundara, M. - 15.12.2011):

i. Ground 2 raises issues of law as to the competence of FCC when it determined the matter.
ii. If it were found FCC was not properly constituted, proceedings and decisions would undoubtedly be a nullity and would be unnecessary to determine the appeal on merits as to whether the appellant had contravened competition law and *vice versa*.
iii. When there is a *lacuna* in rules, CPC can apply.
iv. Document annexed to affidavits are documentary evidence and should be numbered and marked as exhibits.

Application granted; costs in the cause.

20. BP TANZANIA LIMITED & 12 OTHERS V. EWURA - APPEAL NO. 7/2011

Appeal against a decision of EWURA filed on 11.08.2011. The respondent reviewed the petroleum pricing template (formula) and set out cap prices, both retail and wholesale, for petroleum products. Appellants were aggrieved by the decision of the respondent giving the new cap prices of petroleum products which effectively decreased the prices and some were aggrieved by the Compliance Orders issued to them after they had stopped to supply petroleum products which caused shortage of petroleum products in the country. In principle the Appellants appeal contended that EWURA's 2011 pricing formula was arrived at as a result of political manipulation and pressure and consequently, the respondent failed to discharge its duties as an independent regulator.

DECISION (Hon. Sheikh, R., Juma, A., Dr. Bundara, M. - 24.09.2012):

i. No evidence to support the allegation of government pressure over the respondent's decision to review the pricing formula.

ii. In carrying out the review of the pricing formula the respondent did involve the stakeholders in the industry and in addition after seeking the comments of the stakeholders the respondent held a public inquiry as required under the law to which all the appellants were invited.

iii. The appellants were afforded adequate opportunity to be heard during the whole inquiry process; their objections to the cap prices were taken into account resulting in the amended notice of the cap prices.

iv. No evidence at all to substantiate loss suffered by the appellants as a result of the new pricing formula.

v. In discharging its duties a regulator has to balance the interests of service providers with that of all the rest of the stakeholders including the consumers as well as the interests of the government such as the promotion of economic efficiency, the protection of interests of consumers and efficient suppliers and the promotion of the availability of regulated services to all consumers.

Appeal dismissed with costs.

21. TANESCO V. CLEMENT BERNARD ALPHONCE & EWURA – APPEAL NO. 1/2011

Appeal against a decision of EWURA filed on 13.01.2011. The 1st respondent complained to EWURA that the appellant had unlawfully disconnected power at his milling machine located in Dodoma and requested EWURA to order the appellant to reconnect power and award compensation. EWURA found that the appellant had illegally disconnected power thus granted the 1st respondent's prayers.

DECISION (Hon. Sheikh, R., Juma, A., Dr. Bundara, M. - 30.11.2012):

i. Removal of the meter and disconnection of electricity supply from the 1st respondent's premises were unlawful due to non-compliance with the laid down procedure in the Electricity Act.

ii. Testing of the disputed meter at the appellant's workshop without involving the 1st respondent was contrary to the rules of natural justice.

iii. Report tendered by the appellant on the finding of the meter testing did not originate from an electrical inspector as required by the law hence invalid.

iv. EWURA had improperly computed and granted compensation to the 1st respondent without any basis or sufficient evidence to support the claim on a balance of probabilities.

v. Damages need not be substantial in the absence of sufficient evidence.

Appeal partly allowed.

22. VODACOM TANZANIA LIMITED & ZANTEL V. TCRA – CONSOLIDATED TRIBUNAL APPEAL NO. 2 AND 4 OF 2011

Appeal against a decision of TCRA filed on 23.03.2011.Upon EPOCA being enacted, it became mandatory for telecommunication operators to register all their subscribers. The appellants were found liable for causing certain unregistered SIM cards to be used contrary to the provisions of EPOCA. TCRA ordered the appellants to refrain, deactivate all unregistered SIM card in the market and activate registered SIM cards only thus, the appeal.

DECISION (Hon. Sheikh, R., Prof. Kironde J.M.L., Kasonda, P. - 30.11.2012):

i. TCRA has the option of dealing with offences in the regulated sector in the manner it deems fit, it may issue a compliance order or depending on the circumstances it may institute criminal proceedings through the DPP's office.

ii. The principle of natural justice/bias and its exception do not apply in this appeal due to the fact that TCRA is not a court of law or a judicial organ but purely a quasi-judicial/administrative organ entrusted with the task of regulating the communications sector.

Appeal dismissed.

23. TBL V. SBL, FCC & COCA COLA – CONSOLIDATED APPEAL NO. 4 & 5/2010

Appeals had 9 grounds of appeal but the Tribunal granted leave to argue ground 2 first dealing with the competence of FCC when it determined the matter giving rise to the appeals. The appeals were against a decision of FCC both filed on 27.05.2010 finding TBL had breached competition law. SBL complained before the FCC that TBL was engaged in unfair trade practices which were restricting/harming competition in the beer industry and TBL cross-complained that SBL had been using crates and bottles belonging to TBL in the market.

FCC investigated and found that the arrangements between TBL and SBL on the usage of certain crates and the circulation of euro bottles were anti-competitive agreements as against each other and therefore unlawful and found TBL had seriously infringed the Fair Competition Act (FCA) No. 8 of 2003 by entering into branding agreements which had led automatically to serious and important distortions of competition in the beer market in Tanzania.

DECISION (Hon. Sheikh, R., Prof. Kironde J.M.L., Dr. Bundara, M. - 06.12.2012):

i. The meetings of FCC held during the determination of the Complaint were not lawful meetings for lack of a proper quorum.

ii. The decision in the Complaint was *ipso facto* invalid and therefore a nullity.

iii. All matters/complaints DECISION by FCC in the past, before this decision, without there being the necessary/required quorum due to the invalid appointment of the Chairman/member shall not be affected by the decision of the Tribunal.

24. VIOLET CHRISTOPHER NDIZI V. MIC & TCRA – APPEAL NO. 4/2012

Preliminary objection to the appeal by the 1st respondents on the ground that the record of appeal was notserved upon the respondents.

The appeal was against a decision of the TCRA IN Complaint No. 005 of 2012 filed on 18.09.2012.

DECISION (Hon. Sheikh, R., Ndanu, G., Kyauke, O. - 21.02.2014):

i. Defective record of appeal renders the appeal incompetent.
ii. Noncompliance to the FCT rules warrants rejection of the appeal.

Appeal struck out with costs.

25. MABIBO BEER, WINE AND SPIRITS LIMITED & TRA V. FCC, LUCAS MALLYA t/a BARAKA STORES & S.H. AMON ENTERPRISES CO. LTD – APPLICATION NO. 2/2013

Application for revision on which the applicant sought, among others, orders to call for the records of proceedings, directions, correspondences and orders of the FCC; revising, quashing and setting aside all proceedings, directions and orders made by FCC in Complaint No. 3/2009; order declaring FCC has no jurisdiction to hear and/or determine Complaint No. 3/2009; and pay costs.

Respondents raised objections against the application on grounds that FCT has no jurisdiction to grant orders sought and the application is incompetent and bad in law.

DECISION (Hon. Sheikh, R., Tenga, N.L., Kyauke, O - 24.02.2014):

i. FCC was ordered by the Tribunal to hear the complaint *de novo vide* Tribunal consent orders made in Consolidated Appeals Nos. 8/2010, 9/2010 & 5/2011 thus, FCC had to commence fresh investigation in respect of the Complaint.

ii. Statement of the case issued by FCC after initiating fresh investigation does not constitute a decision of FCC thus, no decision to revise or to appeal from.

iii. Application of rules of procedure made under the CPC is limited to (a) when there is an appeal and (b) the schedules to the CPC only. Sections of CPC cannot be applied by relying to rule 33 of FCT Rules 2012.

iv. Jurisdiction for revision and appeal must be provided by statutes; FCT is not vested with statutory powers to invoke revisional or supervisory jurisdiction which are vested on the High Court.

Application being misconceived is struck out with costs.

26. EMIRATES AIRLINES V. IRFAN M. DINANI & TCRA – APPLICATION NO. 5/2012

Preliminary objection against an application for extension of time to file notice of appeal against the decision of TCRA on the ground that the list of authority was filed out of time thus, should not be relied upon by the applicant.

DECISION (Hon. Sheikh, R., Maghimbi, S., Kyauke, O - 28.02.2014):

i. List of authority was not filed in compliance to rule 22 of the FCT Rules 2012.

ii. Applicant is barred form relying on the list and the same is truck out.

27. BEACH LEONARD MAKAGA t/a MULEBA FILING STATION V. EWURA – APPLICATION NO. 10/2014

Application for extension of time to lodge a notice of appeal under certificate of urgency. The applicant's pleadings stated that he could not promptly lodge the notice of appeal because he had to look for assistance to pursue the appeal and the delay was also attributed by misunderstanding of the law applicable.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Ndanu, G.- 10.10.2014):

- **i.** Order for extension of time may be granted in the exercise of discretionary powers and upon considering circumstances of each individual case.
- **ii.** Extension of time may be allowed upon sufficient cause or otherwise where there are chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, and the legality of the decision intended to be appealed against.
- **iii.** The applicant failed to adduce sufficient reason for extension of time however, given the circumstances of the case the delay was not intentional.
- **iv.** The applicant delay was attributed to the letter from EWURA which made the applicant wait only to find himself time barred.

Application granted; each party to bear its own costs.

28. SIFALINE JUMA MFINANGA V. TANESCO & EWURA – APPEAL NO. 5/2012

Appeal against a decision of EWURA filed on 23.10.2012. EWURA dismissed the appellant's complaint on compensation for the loss of a house and properties therein which were destroyed by fire alleged to have resulted from an electric fault caused by TANESCO after finding that the appellant had failed to prove that TANESCO was responsible for causing the fire.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Ndanu, G. - 19.11.2014):

i. The evidence adduced by the appellant inevitably justifies the decision by EWURA as it is not sufficient and/or substantial to incline a fair and impartial mind to the appellants' side that TANESCO was responsible for the fire.

ii. Having failed to prove that the fire was caused by either act or omission of the 1st respondent, the appellant is not entitled to any damages.

Appeal dismissed.

29. NATIONAL OIL (T) LTD V. EWURA – APPEAL NO. 6/2012

Appeal against a decision of EWURA filed on 25.10.2012. EWURA sent an inspector to check on the quality of petroleum products offered for sale to the public at Petro Mafinga Service Station in Mafinga owned and operated by the appellant. The inspector was informed that the manager was absent thus, the inspector left without collecting samples. However, EWURA issued a compliance order stating that the appellant had refused to allow the inspector to collect petroleum samples for testing contrary to the law and ordering the appellant to stop selling or offering for sale petroleum products to the public at the Petro Mafinga Service Station and show cause. EWURA then ordered the Petro Mafinga Service Station to remain closed until a fine of Tshs. 7,000,000/= is paid. The appellant paid the fine after which EWURA allowed Petro Mafinga Service Station to re-open and continue with business on the same day.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Ndanu, G. - 19.11.2014):

i. EWURA erred in penalizing the appellant without first establishing whether or not the inspector had followed the proper procedure as provided under the law.

ii. EWURA also erred in penalizing the appellant in the absence of sufficient evidence.

iii. EWURA must be regardful of fair and judicious exercise of its powers and at the same time conduct himself in a highly professional manner to prevent abuse, misuse, unjust and biased decisions.

Appeal allowed with costs and the fine of Tshs. 7,000,000 be refunded forthwith.

30. TANESCO V. MS. ELIZABETH KIUNSI & EWURA – APPEAL NO. 3/2013

Appeal against a decision of EWURA filed on 09.04.2013. EWURA ordered the appellant to pay the 1st respondent compensation amounting to Tshs. 29,250,000/= after hearing her complaint and finding TANESCO liable for the fire which destroyed her house. EWURA found that the source of fire was electricity from the appellant's system and that the appellant acted negligently, thus causing the 1st respondent house to burn down. EWURA also condemned the appellant to pay costs.

DECISION (Hon. Muruke, Z.G., Prof. Mkenda, A., Maghimbi, S. - 20.11.2014):

i. EWURA has powers to entertain tortious matters arising out of the electricity sector in relation to negligent acts causing physical injury or damage/loss of property but has no power to entertain tortious matter relating to loss of life which falls within the jurisdiction of the ordinary courts of law.

ii. The finding as to what was the source of fire is a question of fact. The evidence on record supports the finding reached by EWURA. Thus, no basis to interfere with the decision of EWURA.

Appeal dismissed each party to bear its costs.

31. AYUBU SEIF SAID V. TANESCO & EWURA – APPEAL NO. 4/2013

Appeal against a decision of EWURA filed on 09.04.2013. The Appellant lodged a complaint before EWURA against TANESCO disputing a debt amounting to Tshs. 5,339,320.25 on ground that the said debt is unjustifiable. EWURA came to the conclusion that the appellant failed to prove his complaint hence the appeal.

DECISION (Hon. Muruke, Z.G., Prof. Mkenda, A., Kyauke, O. - 20.11.2014):

i. The appellant cannot bring new evidence at appeal level without following procedures otherwise it will amount to reopening the matter for hearing.

ii. The price of consumed units of electricity consumed by the appellant was not ascertained by EWURA as requested by the law.

EWURA ordered to ascertain the price of units of electricity consumed by the appellant, and reconcile with payments made by the appellant, if any. Appellant ordered to settle the outstanding bill without fail. Each party to bear its own costs.

32. MARTIN MBWANA V. TUKTUK LIMITED & CHIEF INSPECTOR, MERCHANDISE MARKS ACT – APPLICATION NO. 1/2014

Application for extension of time to file notice of appeal against part of the decision of the Chief Inspector. Ground adduced in support of the application was that the delay was occasioned by an oversight on the applicant.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. - 01.12.2014):

i. Order for extension of time may be granted in the exercise of discretionary powers; upon considering circumstances of individual case; and if the applicant provide explanation on the delay.

ii. An oversight on the applicant demonstrates lack of seriousness and diligence; and also shows negligence in handling the affairs of the client thus, not sufficient to warrant grant of the application.

Application dismissed with costs.

33. MURZAH SOAP AND DETERGENTS LTD V. FCC – APPEAL NO. 2/2014

Appeal against a decision of FCC filed on 27.08.2014.FCC found the appellant had infringed the FCA by failing to notify a merger in the acquisition of Sabuni Detergent Limited including its assets.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. - 02.12.2014):

i. Non filing of the list of authorities and skeleton arguments, and non-appearance on the day of hearing without any information is not only a non-compliance with the rules of the Tribunal but also demonstrate negligence in handling appeal before the Tribunal.

ii. Tribunal must dismiss appeal when the appellant fails, without good cause, to appear and prosecute the appeal unless Tribunal orders otherwise.

Appeal dismissed for lack of prosecution with costs.

34. EMIRATES AIRLINES V. IRFAN M. DINANI & TCAA – APPEAL NO. 1/2014

Appeal against a decision of TCAA filed on 30.04.2014. TCAA decided that 1st respondent be compensated with two business class roundtrip tickets for DAR-DXB-DAR after hearing a complaint against EMIRATES on the breach of duty of confidentiality by unauthorized disclosure of passenger information to independent travel agent (third party).

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Ndanu, G. - 08.12.2014):

i. The filing of Memorandum of appeal alone without records of appeal does not amount to filing of appeal before the Tribunal.
ii. Memorandum of appeal must contain the decision appeal against, for the Tribunal to satisfy itself that there is prima facie appeal.
iii. Failure to serve pleadings upon the respondents within the specified time is a fatal omission.
iv. There is no proper appeal before the Tribunal.

Appeal struck out with costs.

35. PAUL MAGASHA V. MIC TANZANIA LIMITED & TCRA – APPLICATION NO. 6/2014

Application for extension of time to file notice of appeal against the decision of TCRA. Ground adduced in support of the application was that the applicant was engaged in consultation for purposes of seeking advice and guidance on the matter.

DECISION (Hon. Muruke, Z.G., Prof. Mkenda, A., Ndanu, G. - 10.12.2014):

i. Applicant must show sufficient cause for delay and must account for all the days that he delayed in lodging his appeal.
ii. Show of sufficient cause is not by mere assertion by documentary proof.
iii. An oversight on the applicant's counsel demonstrates lack of seriousness and diligence; and also shows negligence in handling the affairs of the client.
iv. Rules requiring applicant to show sufficient cause for delay are mandatory and they go to the root of the essence of time limitation to ensure end to litigations.

Application lacks merit.

36. TANESCO V. NYARONYO MWITA KICHEERE & EWURA - APPEAL NO. 1/2012

Appeal and cross appeal from a decision of EWURA filed on 01.02.2012 and 28.02.2014 respectively.

The appellant was ordered by EWURA to pay the 1st respondent 960,000 TZS as special damages and 3,000,000 TZS as general damages after it was found that the appellant had breached a duty of care when the appellant reconnected electricity through the old postpaid meter resulting in unaccounted power usage by tenants in the premises owned by the 1st respondent instead of the LUKU meter as agreed between the appellant and the 1st respondent. The appeal was in respect of the damages awarded where the appellant claimed that the 1st respondent failed to substantiate his claim for damages.

The cross-appellant appeal was in respect of the quantum of damages granted that it was not sufficient considering the length of the matter and the difficulties the cross appellant encountered.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Ndanu, G. - 20.04.2015):

- **i.** Where a party has established a right which has been infringed, thus causing him to suffer, then award of damages should be done upon consideration of the circumstances of the particular case.
- **ii.** The evidence before EWURA did not justify the award of 960,000 TZS as special damages due to the fact that the 1st respondent did not plead and sufficiently prove his claim for special damages.
- **iii.** Taking into consideration the trouble caused to the 1st respondent as demonstrated in the letters addressed to EWURA, the award of 3,000,000 TZS as general damages meets the ends of justice.

Appeal partly allowed; cross-appeal dismissed.

37. MSAE INVESTMENT CO. LTD V. SUMATRA– APPEAL NO. 1/2013

Appeal against a decision of SUMATRA filed on 03.01.2013. The appellant is challenging the respondent's decision of revoking operating license No. A4A014199 in respect of the appellant's vehicle with registration Number T.789 BAX operating between Dar es Salaam and Arusha when the appellant stayed for more than 8 hours without providing alternative transport to the passengers on board, contrary to licensing conditions under which the appellant was operating.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Ndanu, G. - 21.04.2015):

i. SUMATRA acted reasonably in handling the matter and fulfilled the duty imposed on them which is to strive to enhance the welfare of Tanzania Society by promoting effective competition and economic efficiency and protecting the interest of consumers and efficient suppliers.

ii. Appellant failed to prove his case thus not entitled to damages.

Appeal dismissed with costs and appellant ordered to surrender the license.

38. SUMATRA V. MSAE INVESTMENT CO. LTD – APPLICATION NO. 9/2013

Application for review in relation to Tribunal's order made in Application No. 1/2013 for stay of execution on grounds that the order could not be implemented due to circumstances prevailing over the matter.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Ndanu, G. - 21.04.2015):

i. The respondent's license had already expired before the order for stay of execution and the car had also been sold to another owner as such the Tribunal order in the application for stay of execution is revised.

ii. The respondent failure to prove that he had surrendered the license to the applicant also calls for revision of the order for stay of execution.

Application for revision granted.

39. EWURA V. BEACH LEONARD MAKAGA t/a MULEBA FILING STATION – APPLICATION NO. 12/2014

Application for extension of time to file a reply to the memorandum of appeal. The applicant's pleadings stated that he could not promptly lodge the reply to the memorandum of appeal because of internal factors which caused delay in the submission of appeal document to his legal counsel.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O.- 22.04.2015):

i. Order for extension of time may be granted in the exercise of discretionary powers and upon considering circumstances of each individual case.

ii. Extension of time may be allowed upon sufficient cause or otherwise where there are chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, and the legality of the decision intended to be appealed against.

iii. The applicant failed to adduce sufficient reason for extension of time however, given the circumstances of the case the appeal would not be resolved without a reply to the memorandum of appeal.

Application granted.

40. AIRTEL TANZANIA LTD V. SEMENI SIWA SILAYO & TCRA - APPEAL NO. 2/2012

Appeal against a decision of TCRA filed on 08.06.2012. Mr. Semeni Siwa Silayo complained to TCRA about unjustified SIM swap of his number which

was connected to his bank account resulting to loss of funds in his NMB account. TCRA found that the appellant was negligent in re-allocating the line to another customer and ordered the respondent to pay fine for contravening consumer protection regulations amounting to Tshs. 5M, costs of following up the matter to Mr. Silayo amounting to Tshs. 2M and compensation amounting to Tshs. 4M.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. - 23.04.2015):

i. The appellant dealt with Mr. Silayo's complaint, but not to his satisfaction and standard required. The appellant was negligent and as such liable to pay Mr. Silayo general damages amounting to Tshs. 5M.

ii. According to expert witness the role of Airtel in mobile banking is on integration and what causes theft in bank accounts through mobile phone is disclosure of the password. Mr. Silayo disclosed his password to an unknown person.

iii. TCRA being the regulator of communications with all legal powers and sophisticated technology to investigate who had called Mr. Silayo to inquire about his NMB password had no sufficient grounds to hold the appellant liable for the theft of money in NMB account.

iv. TCRA ordered the appellant to pay fine of Tshs. 5M under a wrong provision thus the fine cannot be sustained.

v. TCRA adhered to the principles of procedural fairness/natural justice in the context within which the case was dealt with at the TCRA.

vi. TCRA acted upon all evidence attached to the appeal thus, no evidence that shows or suggests that TCRA was biased.

vii. Costs claimed to have been incurred by Mr. Silayo were not proved.

Appeal partly allowed.

41. TANESCO V. SAMWEL MHINA & EWURA – APPEAL NO. 3/2014

Appeal against a decision of EWURA filed on 29.08.2014

The Appellant complained before EWURA that the fire which burnt his house and properties resulted from an over current which passed through a jumper wire put by TANESCO on transformer line number 3 connecting electricity to his house.EWURA found TANESCO to be in breach of the duty of care owed to the complainant and further ordered TANESCO to pay the complainant TZS 70,000,000/= being the value of the burnt house and TZS 10,000,000/= being compensation for special damages

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Ndanu, G. - 23.04.2015):

- **i.** EWURA has powers to entertain tortuous matter arising out of electrical supply, installation, equipment or any part thereof in relation to negligent acts causing physical injury or damage/loss of property.
- **ii.** The source and cause of fire are technical matters that must be sufficiently established in order to reach a fair decision as to who is responsible for the loss incurred in case of fire.
- **iii.** In the absence of fire investigation report prepared by a professional fire investigator, the source and cause of fire may be established by looking at the totality of the evidence submitted by parties.
- **iv.** On the basis of all the testimonies, evidence tendered, observation made by EWURA when visiting the *locus in quo* and submissions made by parties, the decision of EWURA to hold the appellant responsible for the fire is reasonable and therefore cannot be faulted.

Appeal partly dismissed with costs.

42. NTULLY HUGGINS V. MIC TANZANIA LIMITED & TCRA – APPEAL NO. 3/2012

Appeal against a decision of TCRA filed on 03.10.2012. Appellant requested the Tribunal to declare him an overall winner of JIKOKI promotion

conducted by MIC Tanzania Ltd (TIGO) and licensed and supervised by Gaming Board of Tanzania as a regulator of the gaming activities in Tanzania after being dissatisfied with the TCRA award of Tshs. 8M as compensation for persuading the appellant to participate in an invalid game.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Maghimbi, S. 27.04.2015):

i. Regulatory Authorities are joined as parties on appeal so that they can defend their own decisions by advancing arguments and making submissions on how they have arrived at a certain decision since they have substantial interest in the sectors that they regulate and definitely in the outcome of the case regardless of whether they acted *suo moto* or upon a complaint.

ii. Licensing and regulatory functions given to TCRA with respect to public electronic communication systems is limited to provision of network facilities, network services, content services and application services, TCRA has no jurisdiction to issue gaming licenses or regulate gaming activities or even entertaining complaints originating from the gaming activities.

Proceedings and the decision of TCRA quashed.

43. TANESCO V. ROBINSON TRADERS CO. LTD & EWURA – APPEAL NO. 4/2014

Appeal filed on 29.08.2014against the decision of EWURA wherein TANESCO disconnected power in business premises of the 1st respondent located at Manzese area due to unpaid bills. The 1st respondent disowned the unpaid bills and claimed that the debt belongs to another person who was a previous tenant whom they do not know and have no working relationship with. 1st respondent complained to EWURA which held that the transfer of the debt was not proper and the reasons advanced by the appellant for that transfer are not supported by the law or good electricity practices and ordered TANESCO to pay compensation.

DECISION (Hon. Muruke, Z.G., Prof. Mkenda, A., Tenga, N.L. - 28.04.2015):

i. Under the doctrine of privity of contract, a person cannot acquire rights or be subject to liabilities arising out of a contract to which he is not a part.
ii. TANESCO unfairly imposed the liability of another consumer on Robinson Traders out of despair, being the only supplier of electricity in our country; TANESCO forcibly subjected Robinson Traders to pay for the debt since it knows that Robinson Traders would have no option than paying for the debt in order to be supplied with power.
iii. EWURA neither acted on a wrong principle of law nor misapprehended the facts in awarding the general damages. The quantum of awarded general damages is not inordinately high considering the circumstances of the case.

Appeal dismissed with costs.

44. FUEL MASTER (T) LIMITED – KATONGA FILLING STATION V. EWURA – APPLICATION NO. 3/2014

Application for extension of time to file notice of appeal against the decision of EWURA. Ground adduced in support of the application was that parties were engaged in exchange of correspondences signifying that the matter had not been finally settled.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. - 28.04.2015):

i. In the absence of an enabling provision in both EWURA Act and Law of Limitation Act regarding who has the power to extend time within which to file appeals, nothing limits the Tribunal from exercising powers to extend time for filing notice of appeal stipulated in the principal legislation of respective regulatory body or commission.

ii. Order for extension of time may be granted in the exercise of Tribunal's discretionary powers; upon considering circumstances of individual case; and if the applicant provide sufficient reason.

iii. It is evident that parties were reconsidering the matter as the respondent did not enforce the compliance order until after 7 months after issuing the same.

iv. As the applicant raised an issue of legality, extension of time should be granted even if for that purpose alone so as to ascertain the allegation and take appropriate measures.

Application granted with no order as to costs.

45. IBRAHIM A. FUNDI V. TANESCO & EWURA – APPLICATION NO. 9/2014

Application for extension of time to lodge a notice of appeal filed on 08.09.2014. The applicant's pleadings stated that he could not promptly lodge the notice of appeal because he had to look for assistance to pursue the appeal since he has no money to hire an advocate. In addition, the applicant stated that the intended appeal involves some elements of illegalities.

DECISION (Hon. Muruke, Z.G., Ndanu, G., Kyauke, O. - 28.04.2015):

i. Regulatory Laws and FCT Rules did not intend to limit powers of the Tribunal in extending time to file notice of appeal because such power is incidental to the Tribunal's general jurisdiction of hearing and determining appeals from regulatory bodies and FCC.

ii. Orders for extension of time may be granted upon sufficient cause being shown depending on circumstances of each case.

iii. Overall circumstances of the case justify the delay.

Application granted.

46. EMIRATES AIRLINES V. IRFAN M. DINANI & TCAA – APPLICATION NO. 13/2014

Application for extension of time to lodge a notice of appeal against the decision of TCAA awarding the respondent two business class round tickets for DAR-DBX-DAR for breach of duty of confidentialityby unauthorized disclosure of passenger information to independent travel agent (third party). The applicant's pleadings stated that the decision of TCAA was tainted with lack of jurisdiction and non-compliance of the law and procedures.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Ndanu, G.- 29.04.2015):

- **i.** Application for extension of time may be granted in the exercise of discretionary powers which has to be exercised judiciously.
- **ii.** Extension of time may be allowed upon sufficient cause and a number of factors have to be considered.
- **iii.** Due to the allegations of illegality then sufficient cause is given.

Application granted.

47. TANGA FRESH LIMITED V. FCC – APPEAL NO. 5/2014

Appeal filed on 26.09.2014against the decision of FCC which learnt through stakeholders that the appellant acquired its two competitors, Morani Dairy Company Ltd and International Food Processors Ltd who were doing business of collecting raw fresh milk from the farmers and processing dairy products in Tanga Region. FCC found the Appellant liable for failing to notify a merger and strengthening a position of dominance in the market contrary to the FCA, 2003 and ordered to pay fine amounting to TZS 460,945,000/=.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. - 29.04.2015):

- **i.** The requirements of procedural fairness were satisfied by FCC.

ii. The act of the appellant acquiring the assets of Morani Dairy Company Ltd and International Food Processors Limited amounted to a pure merger as defined by the FCA.

iii. If the two acquired companies had stopped doing business as alleged, the appellant was supposed to apply to FCC showing that the assets would exit the market and the appellant offered a least anti-competitive alternative use of the assets of the business.

iv. There is no justification of legality of the appellant's conduct in the absence of a notification clearance certificate from the FCC or an exemption order given by the FCC.

Appeal dismissed with costs.

48. DANVIC PETROLEUM (T) LTD V. EWURA – APPEAL NO. 7/2013

Appeal filed on 28.06.2013against the decision of EWURA wherein EWURA revoked the Petroleum Products (Wholesale) License granted to the appellant for contravention of the law, and breach of the terms and conditions of the license. Prior to the cancellation, the appellant was issued with a compliance order and was requested to show reasons why license should not be canceled; upon submission of its defense more evidence was requested by EWURA which the appellant produced.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. - 20.10.2015)

i. Issuance of the compliance order amounted to holding an inquiry which should have been followed by either formal criminal proceedings before appropriate authorities vested with criminal jurisdiction and/or administrative proceedings before EWURA in the exercise of its regulatory powers for the breach of terms and conditions of the license before taking adverse action or decision to revoke the license.

ii. The compliance order did not state specific grounds upon which the license may be revoked thus denied the appellant the opportunity to

defend himself against those grounds amounting to violation of the right to be heard thus, against the rules of natural justice.

iii. Violation of rules of natural justices is so fatal that even when there is no right of appeal, the High Court may still investigate records of lower courts, tribunal or a public authority and quash the same for violation of rules of natural justice

Appeal allowed,each party to bear own costs.

49. TOYOTA TSUSHO CORPORATION CFAO MOTORS (T) LTD V. FCC – APPEAL NO. 5/2013

Appeal filed on 02.05.2013against a decision of FCC wherein the appellant notified FCC of their intention to acquire CFAO (CFAO Motors Tanzania Ltd). The merger application was in respect of the appellant's intention to purchase 100% shares held by CFAO in CFAO Motors Tanzania Ltd following the acquisition by the appellant of CFAO which until July 2012 CFAO was de facto controlled by the Pinault Printemps Redoute. The acquisition was predicted to lead to a horizontal overlap in the Tanzanian market for distribution of brand-new motor vehicles and spare parts in so far as the appellant and CFAO were concerned.

FCC investigated the application with a view to establishing the effects of the transaction in the relevant market. The investigations established that the appellant's market share prior to the acquisition was 40% and that of the targeted firm, CFAO Motors Tanzania Ltd, was 18.445%. Thus, when combined the market share of both firms would be 58.445% and, therefore, exceeding the 35% market share threshold provided under the FCA. This conclusion and other factors that were considered in the disputed decision led to the rejection of the application as it contravened section 11(1) of the FCA.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Kyauke, O. - 21.10.2015):

i. Control of one entity over the other is a matter of fact and such control can either be direct or indirect.

ii. If the merger in question was to be approved and the two car brands, Toyota and Nissan, were to be under the control of one distributor, the possibilities of creating artificial scarcity of a particular competing brand, in order to raise prices could be deliberately made since all would be under the watch of the appellant which indirectly controls TTL through the exclusive distributorship agreement regardless of the existence of the exit/terminations clauses.

iii. The appellant is the brain of the business conducted by TTL and hence has a footing/presence in the Tanzanian market through TTL and that acting indirectly through TTL, has a market share of 40% in the defined relevant market and therefore the finding by FCC on this issue cannot be faulted.

iv. One of the purposes of the merger control regime is to control concentration of the companies' business in a particular industry, therefore, the term of relationship between companies matters a lot in determining the effect of a concentration. It is therefore the duty of FCC to analyze and to determine whether one company has commercial influence over another company.

v. Meaning of control under the Black's Law Dictionary to which the appellant has relied on does not restrict FCC from taking a wide view of the concept.

vi. The relevant market in the transaction is that of supply and distribution of brand-new motor vehicles and not a combination of both brand new and used cars.

vii. Due to the vertical integration relationship nature of the relevant market, the wholesale and retail market cannot be separated.

viii. Had the merger application been approved, it would be that both competing brands would be under the watchful eye of the appellant, thus suffocating the chances of inter-brand competition.

ix. FCC rightly prohibited the proposed merger because of the post – merger results. The combined market power would have substantial hence make it possible for competing firms to behave unilaterally through their exclusive distributor and subsidiaries, since they will be sister companies and in doing so increasing the likelihood of reducing competition, choices and rising prices to the detriment of the consumers in the relevant market.

x. New information on the merging firms evidencing change of circumstances must be submitted to FCC not be tendered on appeal. The appellant, ought to have first withdrawn the appeal and file a fresh application before FCC for re-consideration.

Appeal dismissed with costs.

50. TOYOTA TSUSHO CORPORATION ALLIANCE AUTOS LTD V. FCC – APPEAL NO. 6/2013

Appeal filed on 02.05.2013against the decision of FCC wherein the appellant notified FCC of their intention to acquire CFAO (CFAO Motors Tanzania Ltd). The merger application was in respect of the appellant's intention to purchase 100% shares held by CFAO in CFAO Motors Tanzania Ltd following the acquisition by the appellant of CFAO which until July 2012 CFAO was de facto controlled by the Pinault Printemps Redoute. The acquisition was predicted to lead to a horizontal overlap in the Tanzanian market for distribution of brand-new motor vehicles and spare parts in so far as the appellant and CFAO were concerned.

FCC investigated the application with a view to establishing the effects of the transaction in the relevant market. The investigations established that the appellant's market share prior to the acquisition was 40% and that of the targeted firm, CFAO Motors Tanzania Ltd, was 18.445%. Thus, when combined the market share of both firms would be 58.445% and, therefore, exceeding the 35% market share threshold provided under the FCA. This conclusion and other factors that were considered in the disputed decision

led to the rejection of the application as it contravened section 11(1) of the FCA.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Kyauke, O. - 21.10.2015):

i. Control of one entity over the other is a matter of fact and such control can either be direct or indirect.

ii. If the merger in question was to be approved and the two car brands, Toyota and Nissan, were to be under the control of one distributor, the possibilities of creating artificial scarcity of a particular competing brand, in order to raise prices could be deliberately made since all would be under the watch of the appellant which indirectly controls TTL through the exclusive distributorship agreement regardless of the existence of the exit/terminations clauses.

iii. The appellant is the brain of the business conducted by TTL and hence has a footing/presence in the Tanzanian market through TTL and that acting indirectly through TTL, has a market share of 40% in the defined relevant market and therefore the finding by FCC on this issue cannot be faulted.

iv. One of the purposes of the merger control regime is to control concentration of the companies' business in a particular industry, therefore, the term of relationship between companies matters a lot in determining the effect of a concentration. It is therefore the duty of FCC to analyze and to determine whether one company has commercial influence over another company.

v. Meaning of control under the Black's Law Dictionary to which the appellant has relied on does not restrict FCC from taking a wide view of the concept.

vi. The relevant market in the transaction is that of supply and distribution of brand-new motor vehicles and not a combination of both brand new and used cars.

vii. Due to the vertical integration relationship nature of the relevant market, the wholesale and retail market cannot be separated.

viii. Had the merger application been approved, it would be that both competing brands would be under the watchful eye of the appellant, thus suffocating the chances of inter-brand competition.

ix. FCC rightly prohibited the proposed merger because of the post – merger results. The combined market power would have substantial hence make it possible for competing firms to behave unilaterally through their exclusive distributor and subsidiaries, since they will be sister companies and in doing so increasing the likelihood of reducing competition, choices and rising prices to the detriment of the consumers in the relevant market.

x. New information on the merging firms evidencing change of circumstances must be submitted to FCC not be tendered on appeal. The appellant, ought to have first withdrawn the appeal and file a fresh application before FCC for re-consideration.

Appeal dismissed with costs.

51. FUEL MASTER (T) LTD - KATONGA FILLING STATION V. EWURA – APPEAL NO. 3/2015

Appeal filed on 01.06.2015 against the decision of EWURA wherein EWURA closed the Appellant's petrol station for lack of construction approval.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. - 18.12.2015):

i. The appellant was not afforded with an opportunity to be heard before the sanction was imposed.

ii. EWURA’s impugned acts of closing the outlet and fining the appellant were clouded with procedural irregularities occasioning to miscarriage of justice hence rendering them illegal.

iii. Having regard to the intention of the Legislature in enacting Section 13(1) of the Petroleum Act, the appellant shall re-open her filling

station upon fulfilling the required standards prescribed by the Petroleum Act, 2008 as amended and obtaining a written approval from the respondent.

Appeal partly allowed each party to bear its own costs.

52. ANDREW P. KIDIKU V. TANESCO & EWURA – APPEAL NO. 4/2015

Preliminary objection to the appeal by the 2nd respondents on the ground that the notice of appeal and appeal were time barred and incompetent for having a defective memorandum of appeal.

The appeal was filed on 03.08.2015 against a decision of EWURA in which the appellant, on behalf of his son, lodged a complaint before EWURA against TANESCO claiming the amount of Tshs 47,311,925.25 being general damages following delay in connecting electricity power to his son's house. EWURA awarded Tshs 70,541.24, after being satisfied that appellant paid connection fees and TANESCO failed to act promptly.

DECISION (Hon. Muruke, Z.G., Maghimbi, S., Kyauke, O. - 18.12.2015):

i. Appeal filed out of time without seeking extension of time is incompetent for the determination by the Tribunal.

ii. Unnecessary delay of cases defeats the very purpose of establishing the Tribunal and therefore should be condemned.

Appeal dismissed and each party to bear its own costs.

53. SUMATRA CCC V. SUMATRA – APPLICATION NO. 6/2015

Application for orders commanding SUMATRA to implement its Order No. SMTRA/02/2015 on intercity bus fares and to observe regulatory process while discharging its duties after SUMATRA had rescinded Order No. SMTRA/02/2015 upon receiving applications for review of the same from transport service providers. The applicant's pleadings stated that

SUMATRA's management has no power to rescind the order issued by the Board of Directors.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Tenga, N.L. – 01.02.2016):

i. Applications for review from the service providers were duly made and the respondent acted within their parameters.
ii. Suspension of Order No. SMTRA/02/2015 was valid.
iii. Tribunal cannot command implementation of an order when there are changes on the ground.

Application is dismissed.

54. TANZANIA SHIPPING AGENTS' ASSOCIATION V. SUMATRA – APPLICATION NO. 8/2015

Application for extension of time to file notice of appeal against the decision of SUMATRA. Respondent raised an objection that the Applicant lacks *locus standi* as an association it cannot sue or be sued and the application is improper before the court.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Ndanu, G. – 01.02.2016):

i. Being an association, the applicant lacks *locus standi* to bring the matter before the Tribunal; could do so through the Registered Trustees of the Association.

Application struck out.

55. PAUL MAGASHA V. MIC TANZANIA LIMITED & TCRA – APPLICATION NO. 7/2015

Application for extension of time to file notice of appeal against the decision of TCRA. Ground adduced in support of the application was that the earlier application (Application No. 6/2014) was stuck out on technicalities ground,

that there are chances of winning the appeal and that the appeal, if heard on merit, will cure irregularities and injustice in telecommunication sector.

DECISION (Hon. Muruke, Z.G., Tenga, N.L., Kyauke, O. – 02.02.2016):

i. Application for extension of time may be granted in the exercise of discretionary powers which has to be exercised judiciously.

ii. Extension of time may be allowed upon sufficient cause and a number of factors have to be considered.

iii. The applicant failed to account for each day of delay and has not shown sufficient cause/substantive reasons beyond mere assertion in the affidavit that the appeal will cure irregularities and injustice.

Application dismissed.

56. ANDREW MASAGA V. VODACOM & TCRA – APPEAL NO. 5/2015

Appeal filed on 25.09.2015 against the decision of TCRA wherein the appellant alleged that he was blocked from M-Pesa services for 16 days thus incurred loss. He complained before TCRA where his complaint was dismissed for lack of merits. On appeal to the Tribunal, the issue was whether the appellant proved his claim before TCRA.

DECISION (Hon. Muruke, Z.G., Maghimbi, S., Kyauke, O. - 05.02.2016):

i. Tribunal, being an appellant body is guided by the records that show what transpired at the hearing before the regulatory body.

ii. Tribunal may in rare circumstances interfere with findings of the regulatory body on matters of fact because regulatory body had the advantage of seeing and hearing the witnesses.

iii. Having failed to prove his case before TCRA, the appellant is also not entitled to damages because damages are the pecuniary compensation, obtainable by success in an action for wrong.

Appeal dismissed with no order as to costs.

57. IBRAHIM A. FUNDI V. TANESCO & EWURA – APPLICATION NO. 9/2015

Application for extension of time to file records of appeal out of time. Ground adduced in support of the application was that the record of appeal could not be filed within time because of the delay in obtaining proceedings from the 2nd Respondent and records of the case from the previous advocate.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Maghimbi, S. – 08.02.2016):

- **i.** Application for extension of time may be granted in the exercise of discretionary powers which has to be exercised judiciously.
- **ii.** Extension of time may be allowed upon sufficient cause and a number of factors have to be considered.
- **iii.** As the applicant allegations are on the right of representation and right to be heard and the applicant relies on Legal Aid briefs which has caused the delay, sufficient cause is shown.

Application granted.

58. NTULLY HUGGINS V. MIC TANZANIA LTD & TCRA – APPLICATION NO. 10/2015

Application for review in relation to the decision of the Tribunal in Tribunal Appeal No. 3/2012 in which the Tribunal held that TCRA had no jurisdiction to entertain complaints arising from gaming activities and accordingly quashed both proceedings and decision of TCRA.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Maghimbi, S. – 08.02.2016):

- **i.** For a party to succeed in an application for review he must show that; there is discovery of a new and important matter or evidence, which after exercise of due diligence, was not in his knowledge when

decision was made; there is mistake or an error apparent on the face of the record; any other sufficient reason.

ii. Grounds adduced are purely grounds for appeal not review thus, Tribunal cannot sit on appeal involving its own judgement as it has become *functus officio*.

Application dismissed with costs.

59. MKUTI GENERAL SUPPLIES V. AIRTEL & TCRA – APPEAL NO. 7/2014

Appeal against a decision of TCRA. Appellant lodged a complaint before TCRA against 1st respondent's disconnection of its mobile phone without any justification causing him loss of business and claimed damages of TZS 980,000,000/=. EWURA awarded TZS 2M only as general damages after finding that the disconnection was unjustified.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Ndanu, G. - 25.04.2016):

i. A party is bound by his pleadings and should not be allowed to succeed on a case not made out in his pleadings. The rise in the amount of damage claimed in the cause of hearing improper.

ii. Appellant's claim for compensation for loss of business falls under the category of special damages and not general damages thus they must be specifically pleaded and strictly proved.

iii. The evidence on record does not support the amount of loss pleaded by the appellant.

iv. Taking into consideration inconvenience caused on the appellant TZS 2M awarded by EWURA as general damages is on the lower side. Award varied to TZS 10M.

Appeal partly allowed with costs.

60. EMIRATES AIRLINES V. IRFAN M. DINANI &TCAA– APPEAL NO. 2/2015

Preliminary objection to the appeal by the 1st respondents on the ground that the notice of appeal was defective. The appeal was filed on 14.05.2015 against a decision of TCAA in which TCAA DECISION that 1st respondent be compensated with two business class roundtrip tickets for DAR-DUBAI-DAR(DAR-DXB-DAR) after hearing a complaint against EMIRATES on the breach of duty of confidentiality by unauthorized disclosure of passenger information to independent travel agent (third party).

DECISION (Hon. Muruke, Z.G., Ndanu, G., Kyauke, O. -27.10.2015):

- **i.** Appellant has not properly moved the Tribunal due to a wrong reference in the notice of appeal.
- **ii.** Defective notice of appeal renders the appeal to be incompetent.

Appeal struck out with costs.

61. IBRAHIM A. FUNDI V. TANESCO & EWURA – APPEAL NO. 1/2016

Appeal filed on 11.05.2015against the decision of EWURA wherein the Appellant complained before EWURA that the fire which burnt his house and properties into ashes was caused by an electric fault from TANESCO system starting from TANESCO's meter and then spreading to the main switch. EWURA dismissed the complaint for failure by the appellant to substantiate his claim against TANESCO.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Ndanu, G. - 22.06.2016):

- **i.** Appellant failed to prove that the source of fire was an electric fault from TANESCO.

ii. Appellant failed to prove that he had previously reported power problems to TANESCO thus failed to discharge his burden of proof on a balance of probability to prove his own case.

iii. Findings of the trial authority on matters of fact can only be interfered by an appellate body if there is no evidence to support a particular conclusion or if it is shown that the trial authority has failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong.

iv. The issue of quality of electricity was not an issue that was discussed before EWURA and is not reflected in the proceedings thus, a new issue which cannot be dealt with at appellate stage because it is an afterthought point raised as ground of appeal.

v. Damages normally arise out of breach of contract or duty of care. There being no such breach TANESCO cannot be held liable in damages.

Appeal dismissed.

62. EMIRATES AIRLINES V. IRFAN M. DINANI & TCAA – APPLICATION NO. 11/2015

Application for extension of time to file notice of appeal against the decision of TCAA. Grounds adduced by the applicant are that parties herein have been engaged in numerous proceedings since 2009 and the matter has yet to be heard on merit and there are fundamental legal issues involved in the intended appeal.

DECISION (Hon. Muruke, Z.G., Dr. Bundara, M., Kyauke, O. – 29.06.2016):

i. Application for extension of time may be granted in the exercise of discretionary powers which has to be exercised judiciously.

ii. Extension of time may be allowed upon sufficient cause and a number of factors have to be considered.

iii. As the applicant has complained of illegality which has not been looked at, sufficient cause is shown.

Application granted**.**

63. INDEPENDENT TELEVISION LIMITED V. TANZANIA COMMUNICATIONS REGULATORY AUTHORITY – APPEAL NO. 7/2016

Appeal filed on 25.08.2016 against the decision of TCRA wherein TCRA found the appellant in violation of Content Regulations, 2005 in two different occasions. In one of its programs defamatory words were uttered against the Deputy Speaker and in another program a minor's identity was illegally disclosed. TCRA issued warning to the appellant and further ordered the appellant to pay a fine amounting to 5M for each violation. On appeal, the appellant opposed TCRA's decision on grounds of irregularity in, among others, consolidating the two distinct complaints without hearing the appellant on the consolidation.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Dr. Mwenegoha T. – 11.01.2018):

i. As part of monitoring process, TCRA through its mandated Committee, when it has observed unethical practice in broadcasting, is duty bound to initiate a complaint against an entity for violation of the law without waiting for the consumer to complain.

ii. TCRA should have determined the matters distinctly as they involved rights of different consumer. Consolidation should have made only after hearing parties on the question of consolidation.

iii. A member of the Committee who has interest in the matter should not take part in the proceedings and decision making to abide to the principle of conflict of interests.

iv. *Quasi-judicial* bodies are recognized by the Constitution as other agencies with powers to administer justice apart from Courts of Law. TCRA Content Committee has been legally empowered to monitor compliance failure of which sanctions may be imposed.

v. The appellant violated broadcasting ethics as such TCRA Committee acted within their legal mandate in initiating complaint in the absence of the victims of the appellant's actions.

vi. Appellant was afforded right to be heard in respect of both complaints before imposition of the fine; errors the Committee committed are

failure to hear the appellant on consolidation and non-adherence to the principle of conflict of interests.

TCRA ordered to hear the matter *de-novo.*

64. SARAH M. MUNA V. VODACOM (T) LTD & TCRA – APPEAL NO 3/2017

Appeal filed on 28.03.2017 against the decision of TCRA dismissing a compensation claim wherein the 1st respondent raised a preliminary objection that the appeal is incompetent for lack of record of appeal. The appellant conceded to the objection and prayed to be allowed to rectify the defect.

DECIDED (Hon. J. Sehel, B.M.A., Siyani, M. M., Mkapa, S. – 16.01.2018):

- **i.** Where the appeal does not comply with mandatory requirement under FCT Rules, same is rejected under rule 31 (1)(c) of FCT Rules.
- **ii.** Cost is discretionary power of the Tribunal based on circumstances of every individual appeal.

65. FASTJET AIRLINES LIMITED V. SHADRACK BUSALI & TCAA – APPEAL NO. 8/2017

Appeal filed on 14.06.2017 against the decision of TCAA awarding compensation to the 1st respondent amounting to Tanzanian Shillings equivalent to USD 4000. The 1st respondent bought a return ticket for DSM-Mwanza and DSM–Harare from the appellant and also purchased a bus ticket from Harare–Johannesburg. The appellant cancelled the DSM-Mwanza return flight which caused the 1st respondent to miss his DSM-Harare flight without refund and the 1st respondent had to spend 2 days before securing another ticket to Johannesburg. TCAA ordered the appellant to refund the 1st respondent full costs incurred due to the flight cancellation and general damages amounting to USD 4000. On appeal to the Tribunal, the appellant challenged the quantum of damages for being excessive.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Phillip, B.K. – 17.01.2018):

- **i.** The doctrine of damages aims at restoring an innocent party to the position he would have been if the breach of contract had not occurred and should not be excessive or too remote.

ii. Regulation 25 of the Civil Aviation (Carriage by Air) Regulations, 2008 provides a threshold of equivalent to USD 5000 and it does not lay down principles to be considered in assessing the quantum thus, has to be read with s. 73(1) and (2) of the Law of Contract Act.

iii. The decision of TCAA fell short of reasons thus, TCAA never utilized its power of mind to think, understand and form decision logically in accordance with the evidence and law.

iv. The amount awarded by TCAA is reasonable considering the inconvenience, waste of time, anxiety and stress caused by cancellation of the flight without notice.

Appeal dismissed.

66. FASTJET AIRLINES LIMITED V. HON. KARUA SAMWELI & TCAA – APPEAL NO. 9/2017

Appeal filed on 14.06.2017 against the decision of TCAA awarding compensation to the 1st respondent amounting to Tanzanian Shillings equivalent to USD 4000 for failure to transport the 1st respondent from DSM to Mbeya. The 1st respondent bought a ticket for DSM-Mbeya;on the travel date arrived on time at the airport and secured a boarding pass but the plane left him while waiting to board the plane at the VIP lounge. Appellant offered an alternative flight on the same day but the 1st respondent refused though he bought another ticket and travelled to Mbeya on the next day. 1st respondent claimed before TCAA that he missed a business meeting thus, suffered damages of USD 500,000, TCAA awarded USD 4000, cost of the second ticket purchased and costs of the complaint. On appeal to the Tribunal, the appellant challenged the quantum of damages for being excessive.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Phillip, B.K. – 18.01.2018):

i. Regulation 25 of the Civil Aviation (Carriage by Air) Regulations, 2008 provides a threshold of equivalent to USD 5000 as liability of the carrier and it does not lay down principles to be considered in assessing the quantum thus, has to be read with s. 73(1) and (2) of the Law of Contract Act which provides for principles to be considered in awarding damages such that loss caused by the breach of contract must arise naturally in the usual course of things and should not be remote or indirect loss.

ii. Where there is a conflict between specific and general law, specific law supersedes.

iii. Since the appellant had no control of VIP passengers who are handled by Swissport and the appellants offered another ticket on the same date but which was declined by the 1st respondent then that exonerates the appellant from liability thus, no justification for the award of USD 4000.

Appeal allowed with costs and decision of TCAA quashed.

67. MOHAMED N. WENYA V. TANESCO & EWURA – APPEAL NO. 20/2017

Appeal filed on 11.12.2017 against the decision of EWURA in respect of fire accident that gutted down the house of the Appellant in which the 2nd respondent dismissed the complaint by the Appellant wherein the respondents raised preliminary objection to the appeal on the ground that it is incompetent for lack of record of appeal.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Phillip, B.K. – 18.01.2018):

i. Non-compliance with rule 11(6) of FCT Rules, 2012 calls for the rejection of the appeal in terms of rule 31(1)(c) of FCT Rules, 2012.

Appeal rejected with no orders as to costs.

68. TANESCO V. MILKA KISOTA & EWURA – APPEAL NO. 11/2017

Appeal filed on 1.08.2017 against the decision of EWURA wherein the 1st respondent complained before EWURA that the appellant adjusted her electricity bill from Tshs. 5.3M to 14.5M. EWURA found the adjustment unjustified for failure of providing notification for adjustment of the bill and use of incorrect formula and ordered the appellant to refund to the 1st respondent amount in excess of Tshs. 5.3M. On appeal to the Tribunal the appellant prays to be allowed to recover Tshs. 14.5M on the ground that EWURA erred in law and fact in disregarding the evidence and calculation of stolen electricity units.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Phillip, B.K. – 18.01.2018):

i. A mere delay and miscalculation of the stolen units on the part of the appellant cannot exonerate the 1st respondent from the obligation to pay the actual debt; 1st respondent should neither benefit from her wrong of meter by-passing nor negligence of the appellant in

miscalculating the debts from the stolen units and in delaying for 2 years to demand payment of the correct bill.

ii. Meter by-passing being a criminal offence cannot be subjected to amicably settlement through payment of a lesser amount.

iii. There is no time limit for the appellant to claim bills from the units spent through meter by-passing.

Appeal allowed and decision of EWURA quashed with no order as to costs.

69. FASTJET AIRLINES LIMITED V. FIKIRI LIGANGA & TCAA - APPEAL NO. 7/2017

Appeal filed on 14.06.2017 against the decision of TCAA wherein TCAA awarded compensation to the 1st respondent amounting to Tanzanian Shillings equivalent to USD 5000 for cancellation of the flight without notice. The 1st respondent bought a return ticket for his business trip but could not travel due to faulty system which led to flight cancellation on the day of travel when the 1st respondent had already reached the airport and was waiting to check in. As a result of flight cancellation, the 1st respondent missed his business meeting thus,claimed for compensation for loss of business. On appeal to the Tribunal, the appellant challenged the quantum of the compensation.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Siyani, M. – 12.04.2018):

i. Damages should be aimed to restore an innocent party to the position he would have been if breach of contract had not occurred and should not be excessive or too remote.

ii. TCAA applied a wrong principle of law in awarding damages.

iii. 1st respondent awarded USD 3000 for the inconvenience, anxiety and stress caused by cancellation of the flight without notice.

Appeal partly allowed

70. TANESCO V. MAJOR (RTD) EMMANUEL VAVUNGE & EWURA – APPEAL NO 4/2017

Appeal filed on 31.03.2017 against the decision of EWURA ordering the appellant to pay compensation to the 1strespondent for damages caused by fire wherein the 2nd respondent raised preliminary objection to the appeal on the ground that the appeal is incompetent for lack of pleadings and proceedings.

DECIDED (Hon. J. Sehel, B.M.A., Chidowu, D.L., Dr. Mwenegoha T. – 23.05.2018):

i. Where an appeal is incompetent then the proper cause is to strike out the appeal.

Appeal struck out with costs.

71. JIMMY G. ALLOYCE V. VODACOM (T) LTD & TCRA – APPEAL NO. 13/2017

Appeal and Cross Appeal filed on 9.08.2017 and 22.08.2017, respectively, against the decision of TCRA ordering the1st respondent to pay the appellant damages for inconvenience wherein the 1st respondent raised preliminary objection to the appealon the ground that itis incompetent for lack of record of appeal. Appellant rectified the defect by lodging additional documents after by order of the Registrar of the Tribunal.

DECIDED (Hon. J. Sehel, B.M.A., Siyani, M., Dr. Mwenegoha T. – 01.06.2018):

i. Registrar acted *ultra vires* by granting a prayer made by the appellant to lodge additional documents thus, the order is non-consequential.

ii. An appeal which lacks record of appeal is incompetent and cannot be cured by amendment.

Appeal rejected with costs.

72. JUMA B. HUSSEIN V. VODACOM (T) LTD &TCRA – APPEAL NO. 16/2017

Appeal filed on 13.11.2017 against the decision of TCRA in respect of refusal to address the appellant's criminal complaint against the first respondent wherein the 1st respondent raised a preliminary objection to the appeal on the ground that it is time barred since notice of appeal was filed out of time.

DECIDED (Hon. J. Sehel, B.M.A., Chidowu, D.L., Dr. Mwenegoha T. – 03.07.2018):

i. Filing of memorandum and record of appeal after lodging a notice of appeal out of time makes the appeal incompetent.

ii. Noncompliance with the rules, direction or order of the Tribunal calls for rejection of appeal at any stage of proceedings as per rule 31(1)(c) of the FCT Rules 2012.

Appeal rejected.

73. YUSUFU M. LASHIKONI V. TANESCO & EWURA – APPEAL NO. 11/2016

Appeal filed on 14.11.2016 against the decision of EWURA refusing to grant orders for payment of compensation upon a claim by the appellant that there was a defective meter on his business premises which caused an electric fault that had ruined his motor, circuit breaker wire and main switch. The appellant also claimed before EWURA that he was excessively billed. EWURA found TANESCO liable for failing to inspect the meter when requested by the Appellant but neither ordered TANESCO to pay compensation nor agreed with the appellant that the bill was excessive. In addition, EWURA found that the appellant failed to prove that an electric fault was caused by TANESCO supply system. On appeal to the Tribunal, the appellant claims that, among others, EWURA erred in not awarding damages after it had found TANESCO had performed a misconduct.

DECISION (Hon. J. Sehel, B.M.A., Chidowu, D.L., Dr. Mwenegoha T. –03.07.2018):

vi. Non-compliance with FCT Rules on the filing of the list of authorities and serving the other party calls for rejection of the same.

vii. Damages claimed by the appellant are specific thus, must be strictly pleaded and proved.

viii. Appellant failed to prove his case to the required standard.

Appeal dismissed with costs.

74. AZAM MEDIA LIMITED V. TCRA- APPEAL NO. 5/2016

Appeal filed on 12.08.2016 against the decision of TCRA in which the appellant, holder of a license for support services for subscription content services by satellite, was served with a compliance order by TCRA for breach of his license conditions and EPOCA. TCRA ordered the appellant to pay a fine of TZS 10M for providing content services without a license and to stop the provision of content services. On appeal, the appellant strongly contested the decision on various grounds one of which is, it acted as AZAM Pay TV's support services agent and did not broadcast local contents as found by TCRA.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Dr. Mwenegoha T. – 04.07.2018):

i. The appellant claim that it is only providing support services to the broadcaster, AZAM Pay TV, thus operating within the framework of its license and does not broadcast program is negated by the fact that the technical and installation services provided by the Appellant to AZAM Pay TV through the use of Ground Earth Satellite and Transportable Satellite Trans Receiver contrary to Electronic and Postal Communications (Licensing) Regulations, 2011, Broadcasting Services (Content) Regulations, 2005 and EPOCA.

ii. Regulation 3 of Electronic and Postal Communications (Licensing) Regulations, 2011 which among other things permits the appellant to provide technical and installation services does not extend to AZAM Pay TV (a broadcaster), it only covers the general public who upon payment of subscription fees must be provided with that technical and installation services by the appellant to enjoy broadcasting services offered by AZAM Pay TV.

iii. The licenses for Ground Earth Satellite and Transportable Satellite Trans Receiver have their own use and cannot be used for providing technical and installation services to Azam Pay TV.

iv. Section 45 (3) of the TCRA Act gives TCRA the right of imposing fine and it does not limit the amount to be imposed. Thus, fine was properly imposed.

v. TCRA acted within its mandate; the compliance order was properly issues; and there was no breach of natural justice.

Appeal dismissed with costs.

75. PAULO MTETE V. TANESCO & EWURA – APPEAL NO. 12/2017

Appeal filed on 07.08.2017 against the decision of EWURA wherein EWURA dismissed the appellant's claim of compensation for lack of merit due to failure by the appellant to prove that the source of fire, that destroyed the appellant's house, located at Buguruni Kisiwani, and household items, was the 1st respondent's infrastructure. On appeal, the appellant submitted that EWURA erred in law and fact in failing to evaluate the evidence of the appellant and violating the laws.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Dr. Mwenegoha T. – 04.07.2018):

i. Appellant failed to substantiate his claim that EWURA grossly violated the law by failing to point out to the Tribunal the provision of the law violated or the conduct, act or omission by EWURA that violated the law.

ii. Award of EWURA sufficiently proves that EWURA recorded the evidence given by both the appellant and the 1st respondent and considered the same in reaching the decision.

iii. Evidence provided by the parties gives no conclusive proof that the source of fire was the brackets or poles thus, the burden of proof which lies on the person who alleges not met.

Appeal dismissed with costs.

76. INDEPENDENT TELEVISION LTD & EAST AFRICA TELEVISION LTD V. TCRA – CONSOLIDATED APPEALS NO. 3 & 4/2018

Appeal filed on 22.01.2018 against the decision of TCRA fining the appellant Tshs. 15M for contravention of Broadcasting Services (Content) Regulations, 2005. Appellants noticed that the record of appeal was missing and prayed for extension of time under rule 26 of FCT Rules, 2012 to file a record of appeal on grounds that the Registrar failed to exercise his powers under rule 12 of FCT Rules to order the appellant to rectify; that the appellants be afforded the right to be heard; and that FCT Rules do not prescribe for consequences for failure to comply with rule 11(3) of FCT Rules.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Dr. Mwenegoha T. – 07.09.2018):

i. Filing of record of appeal is mandatory under Rule 11(3)(b) of FCT Rules, 2012.

ii. Consequences of non-compliance is rejection of the appeal under Rule 31(1)(c) of FCT Rules, 2012.

iii. Orders for extension of time cannot be granted as the appeals were incompetent.

Appeals rejected.

77. MYCEL COMPANY LIMITED V. TCRA – APPEAL NO. 2/2016

Appeal filed on 19.05.2016 against the decision of TCRA in which the appellant's four licenses were cancelled for failure to roll out the network and provide services as provided under section 21(a) and (b)of EPOCA. TCRA also found that the appellant's payment of frequency user fees while not in use amounted to hoarding contrary to section 72(3)(b) and (c) of EPOCA. On appeal, the appellant contested the licenses cancellation as the delay was caused by unexplainable circumstances and TCRA knew the

technological and administration challenges faced by the appellant thus, TCRA failed to consider reasons advanced by the appellant.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Dr. Mwenegoha T. – 08.10.2018):

- **i.** TCRA considered the reasons advanced by the Appellant in reaching to the decision of licenses cancellation.
- **ii.** TCRA applied its mind to the evidence on record.

Appeal dismissed with costs.

78. JACKSON R. NDYAMUKAMA V. TANESCO & EWURA – APPEAL NO. 19/2018

Appeal filed on 15.08.2018 against the whole decision of EWURA in respect of a complaint on alleged illegal power disconnection at the appellants bakery in Chato, Geita in which EWURA dismissed the complaint upon finding that the meter was tempered with and ordered the appellant to pay the 1st respondent around Tshs 28.5M. The appeal lacked exhibits tendered by the 1st respondent in contravention to rule 11(6) of the FCT Rules, 2012.

DECIDED (Hon. J. Sehel, B.M.A., Phillip, B.K., Dr. Mwenegoha T. – 07.12.2018):

- **i.** The record of appeal is incomplete as it misses exhibits tendered by the 1st respondent during trial thus contravenes FCT Rules, 2012.
- **ii.** Orders for filing a supplementary record of appeal cannot be granted as there is no proper appeal.

Appeal rejected with costs.

79. NDOLELA HYDRO LTD V. EWURA – APPEAL NO. 5/2018

Appeal filed on 25.01.2018 against the decision of EWURA in which EWURA denied the appellant's application for a provisional electricity generation licence on the Masigira Hydro Power site and decided to grant the same to another entity. On appeal, the appellant contested that, among other things, EWURA's decision was influenced by the decision of the Ministry of Energy and Minerals which should not have been one of the determinant factors.

DECIDED (Hon. J. Sehel, B.M.A., Siyani, M., Dr. Mwenegoha T. – 07.01.2019):

i. Appellant cannot impose different meaning to the grounds of appeal.
ii. The appellant complied partially to the requirement for provisional license.
iii. Rule 8(2) of the Electricity (Generation Services) Rules 2012is very wide and it empowers EWURA to request for any document or information such as the letter of support from the Ministry.
iv. EWURA acted independently and within purview of the law.

Appeal dismissed with costs.

80. VODACOM T. PLC V. ABOUBAKAR ALLY & TCRA – APPEAL NO. 17/2018

Appeal filed on 10.08.2018 against part of the decision of TCRA ordering the appellant to pay to the 1st respondent Tshs. 1.5M as damages wherein the 2nd respondent raised preliminary objection to the appeal on the ground that it is incompetent for lack of record of proceedings as required under FCT Rules.

DECIDED (Hon. J. Sehel, B.M.A., Mlyambina, Y.J., Chidowu, D.L. – 09.01.2019):

i. It is imperative for the appellant to comply with the provisions of Rule 11(3) and (6) of the FCT Rules, 2012.
ii. In the absence of proof that there is no record of proceedings, the Tribunal will find that the rules have been violated and consequently reject the appealin terms of rule 31(1)(c) of FCT Rules, 2012.

Appeal rejected with costs.

81. MOHAMED NGAUNJE WENYA V. TANESCO & EWURA – APPEAL NO. 23/2018

Appeal filed on 13.12.2018 against the decision of EWURA wherein EWURA dismissed the appellant's claim for compensation after a fire accident that caused electrical short thereafter destroyed the appellant's house and household items. The grounds of appeal were, among others, EWURA erred in law and in fact in holding that the appellant failed to prove his claim and exonerate the 1st respondent from responsibility.

DECIDED (Hon. J. Magoiga, S.M., Butamo K.P., Dr. Mwenegoha, T. – 24.05.2019):

- **i.** Power was illegally connected to the house destroyed by fire thus; appellant's own infrastructure caused the fire.
- **ii.** EWURA finding that the 1st respondent is not responsible cannot be faulted given the circumstances of illegal connection that was not contested by the appellant's evidence.
- **iii.** Since 1st respondent is not responsible, the issue of compensation dies a natural death.
- **iv.** 1st respondent conducted investigation and issued a report to substantiate his case, this does not amount to being a judge in his own case and cannot be against the rules of natural justice as contended by the appellant.
- **v.** Appellants request for provision of sketch map and drawing cannot be raised on appeal.

Appeal dismissed with costs.

82. VODACOM T. PLC V. TCRA – APPEAL NO. 8/2018 (REVIEW)

TCRA applied for review of the orders of the Tribunal given on 24.05.2018 which required parties to the appeal to file witness statement and appear for cross examination on the date set for hearing in contravention of the provisions of FCT Rules.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 27.05.2019):

- **i.** Rule 35(2) of the FCT Rules, 2012 confers the discretion on how to take additional evidence; orally or by affidavit.
- **ii.** The rule must be interpreted in its ordinary meaning and be looked in totality with the entire FCT Rules, 2012.
- **iii.** The order to file witness statement was issued erroneously.
- **iv.** Filing of witness statement amounts to adducing evidence in chief, thus commences simultaneous hearing contrary to FCT Rules, 2012.
- **v.** Taking additional evidence is discretionary but must be exercised after re-appraisal of the evidence by the Tribunal not parties.
- **vi.** Tribunal cannot under rule 35(2) of the FCT Rules order witness statement as it such order is beyond the ambit of the law which requires additional evidence to be either orally or by affidavit.
- **vii.** Application for review be registered as Misc. Application in a separate register.

Application for review granted with no costs.

83. RICHARD M. KABUDI V. TANESCO & EWURA – APPEAL NO. 6/2018

Appeal filed on 26.01.2018 against the decision of EWURA wherein EWURA dismissed the appellant's complaint for compensation to a tune of Tshs. 150.1M due to a fire accident that destroyed the appellant's house and households allegedly caused by the 1st respondent's infrastructure. On appeal, the appellant contested the decision of EWURA on the basis of; failure to make a fair and proper analysis of the appellant's evidence; error in finding that the fire started in the house not outside; denial of opportunity to tender pictures taken on the day of the accident; and disregard parties' final submissions.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Phillip, B.K. – 27.05.2019):

- **i.** Evidence adduced by the appellant was secondary evidence, contradictory and not much helpful in the determination of the case.
- **ii.** Finding of EWURA that the fire started from inside the house cannot be faulted.
- **iii.** Orders issued by EWURA under discretionary powers cannot be faulted so long as the appellant was not denied the opportunity to tender his evidence.
- **iv.** EWURA is given powers to regulate its proceedings under rule 16(6) of EWURA (Consumer Complaints Settlement Procedure) Rules, 2012.
- **v.** Failure by EWURA to consider final submissions have not prejudiced the appellant since both parties' final submission were not considered.
- **vi.** No arguments in final submissions that could change the finding that the appellant failed to prove his claims against TANESCO to the standard required by the law.

Appeal dismissed with costs.

84. AIRTEL T. LTD V. TCRA – APPEAL NO. 13/2018 (APPLICATION FOR REVIEW)

Appeal filed on 09.05.2018 against the decision of TCRA in which a Compliance Order was issued to the appellant which fined the appellant over 400 billions for breaching EPOCA and license conditions. On 27.11.2018 when the appeal was called for hearing the appellant made oral prayers for

converting hearing to mention to pave way for an application for discovery which the Tribunal refused to grant and ordered hearing to proceed after which the appellant made a prayer for adjournment which was also rejected, in the end the Tribunal dismissed the appeal for want of prosecution. The appellant then filed an application for review in which he prayed that the Tribunal review its decision made on 27.11.2018 due to the errors the Tribunal made in dismissing the appeal for want of prosecution.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha T. – 28.05.2019):

- **i.** Powers for review are discretionary and can only be exercised where there is apparent error on the face of the record.
- **ii.** The Tribunal has the overriding duty to take into consideration the public concern of bringing litigation to an end before invoking powers for review.
- **iii.** What amounts to apparent error on the face of the record has to be interpreted from case to case.
- **iv.** Grounds raised in the application for review are not errors apparent on the face of the record.
- **v.** Application for review be registered as Misc. Application in a separate register.

Application for review dismissed with costs.

85. TANESCO V. RYAMBOGO MSIBA (next friend to MSIBA RYAMBOGO) & EWURA – APPEAL NO. 1/2019

Appeal filed on 28.01.2019 against the decision of EWURA wherein EWURA found that the appellant liable for damages caused by electrical shock due to stay wire from the infrastructures owned by the appellant and awarded the victim Tshs. 217M as general damages. The appellant contended the appeal on the basis that, among others, EWURA erred in law and fact in finding the appellant negligent without there being proof of negligence and relying on assumed facts; and disregarding measures taken by the appellant in providing awareness campaigns.

DECIDED (Hon. J. Magoiga, S.M., Butamo K.P., Dr. Mwenegoha, T. – 28.05.2019):

- **i.** Testimonies of the appellant's witnesses on the presence, functions, effect, maintenance and the need for removal of the stay wire which was a high tension after completion of infrastructure construction demonstrated high degree of negligence.

ii. Change of issues was not fatal and did not occasion injustice as it did not change the essence but reflect difference between ordinary English and legal languages.

iii. The expert opinion sought by EWURA and obtained from Muhimbili Orthopedic Institute outside of the proceedings is expunged from the Tribunal's record.

iv. Appellant's personnel assigned to do community awareness failed to conduct awareness campaigns.

v. Powers of varying award of the trial court may be invoked in exceptional circumstances such as in the circumstances of the case where EWURA failed to consider the extent of damage in awarding damages.

vi. General damages increased to 300M.

Appeal dismissed with costs.

86. SIMON P. BAJUTA V. ORYX GAS TZ LTD & EWURA – APPEAL NO. 20/2018

Appeal filed on 16.08.2018 against the decision of EWURA wherein EWURA found that the appellant violated the laws and conducted LPG business illegally and in a manner contrary to HSE requirements and ordered the appellant to restrain from undertaking LPG business until licensed by EWURA and pay a fine of Tshs. 20M. The appellant contended the appeal on the grounds that, among others, EWURA erred in law and fact by depriving the Appellant the right to be heard hence failed to comply with principles of natural justice. The appeal was heard *ex-parte* after the respondents' failure to file memorandum of appeal.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 17.09.2019):

i. The appellant was not denied a right to be heard since he refused delivery of summons and failed to exercise remedies provided under EWURA laws to set aside the *ex-parte* order.

ii. The principle of *res subjudice* cannot apply as the case before Hai District Court was criminal in nature and involved different parties from the one instituted before EWURA.

iii. The evidence presented before EWURA which was rejected cannot be relied upon thus, inadmissible.

iv. The decision of EWURA was based on other factors apart from inadmissible evidence therefore cannot be faulted.

v. The appellant waived his right to be heard by his own actions.

Appeal dismisses with costs.

87. TANESCO V. MICHAEL M. MAKOI & EWURA – APPEAL NO. 22/2018

Appeal filed on 30.11.2018 against the decision of EWURA wherein the 1st respondent who run grain milling mashine business, complained and prayed for orders of damages amounting to Tshs. 40M as a result of the appellant's failure to provide electricity supply services for 4 consecutive months. EWURA awarded and ordered the appellant to pay the 1st respondent Tshs. 3.4M. The grounds raised for appeal are that the decision was not based on evidence and was made in an error of the law.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 17.09.2019):

- **i.** Failure to include exhibits in the record of appeal is not fatal when the missing exhibits were not among the documents that were used during trial thus appended to the complaint form; a party was not afforded an opportunity to challenge such exhibits when they were admitted in the course of proceedings; generally proceedings is a record of what transpired, the word does not include exhibits; and the need to be guided by the overriding objective and the shared responsibility where both parties are to ensure that pleadings are complete to enable hearing on merits.
- **ii.** EWURA wrongly applied rules 44 and 45 of the Electricity (Supply Operations) Rules, 2017.
- **iii.** Award granted by EWURA was based on inadmissible evidence.
- **iv.** EWURA must limit itself to claims included in the form of complaint and make its decision based on such claims.

Appeal allowed with costs.

88. TANESCO V. MASHAVU JUMA MABULA & EWURA – APPEAL NO. 25/2018

Appeal filed on 19.12.2018 against the decision of EWURA wherein EWURA ordered the appellant to pay the 1st respondent Tshs. 1.4M as compensation for the loss suffered due to a fire accident that destroyed the 1st respondent's house and household items. Appellant appealed on the ground that EWURA misdirected itself by holding that the appellant had contributed to the fire by his failure to report timely at the scene.

DECIDED (Hon. J. Magoiga, S.M., Chidowu D.L., Dr. Mwenegoha, T. – 18.09.2019):

- **i.** Oral submission of a respondent who fail to file a reply to the memorandum of appeal as required by rule 19 of FCT Rules, 2012 should not be entertained and must be expunged from the record despite of the paramount of right to be heard.
- **ii.** Contributory negligence cannot apply in this case because it has been established that the 1st respondent, through their own fault, caused the fire and the appellant not being a fire fighting brigade cannot be faulted for not attending the scene of the accident.
- **iii.** There being no proof on the record for specific damages, EWURA wrongly awarded compensation to the 1st respondent.

Appeal allowed with no order as to costs.

89. KWANZA BROADCASTING LTD t/a KWANZA ONLINE TV V. TCRA – APPEAL NO. 14/2019

Appeal filed on 09.10.2019 against the decision of TCRA wherein TCRA raised a preliminary objection to the appeal on the ground that the appeal is incompetent for failure to comply with rule 11(3) and (6) of the FCT Rules, 2012 as it lacks proceedings. Appellant conceded to the objection and prayed that the appeal be rejected with no order as to costs.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 28.11.2019):

- **i.** Since the respondent incurred costs of filing a reply to the memorandum of appeal, a notice of preliminary objection and a list of authority then he is entitled to costs.
- **ii.** Reasons for awarding costs to the wining party as enumerated in case laws are to bar parties from filing hopeless cases and put winning party to his financial position prior to the matter.

Appeal rejected with costs.

90. TORCH GENERAL CO. LTD V. CHIEF INSPECTOR OF MERCHANDISE MARKS ACT- APPEAL NO. 8/2019

Appeal filed on 24.07.2019 against the decision of the Chief Inspector at FCC in which the Chief Inspector, acting on a complaint by Nana Focus Co. Ltd about counterfeit goods stored and sold by the appellant, conducted search in the appellant's godown and shop and seized 1,121 boxes of electric bulbs and thereafter heard the complaint which was determined in favour of Nana Focus Co. Ltd hence the appeal. Grounds of appeal, among others, were that the Chief Inspector erred in law by failing to evaluate the appellant's evidence; recognize other legal manufacturers and disregarding the procedural law under the Merchandise Marks Regulations, 2008.

DECIDED (Hon. J. Magoiga, S.M., Dr. Mwenegoha T., Mkapa S., – 13.12.2019):

- **i.** The respondent considered and evaluated all evidence on record that show that the seized counterfeited goods from the appellant were not supplied by Nana Focus Co. Ltd.
- **ii.** The issue that the respondent failed to investigate the matter for 8 months was raised on appeal and cannot be entertained as doing so will tantamount to opening the hearing.
- **iii.** Grounds of appeal that have not been argued in the skeleton arguments and during oral submission, even if not formally amended or abandoned, are considered abandoned even though replied to by the opposite party.
- **iv.** The respondent complied with the whole procedure as provided under regulation 35(1) of the Merchandise Marks Regulations 2008 (as amended).
- **v.** The respondent correctly found that the seized goods were counterfeited goods as the appellant failed to provide sufficient proof to find otherwise.
- **vi.** The seizure notice upheld; goods should not be allowed back to the market.

Appeal dismissed with costs.

91. VODACOM T. PLC V. TCRA – APPEAL NO. 8/2018

Appeal filed on 09.02.2018 against the decision of TCRA wherein TCRA issued interconnection determination No. 5 of 2017 in December, 2017 which had an effect of reviewing down the interconnection charges/rates which were applicable up to 31st December, 2017.The issued interconnection determination No. 5 of 2017 became effective from 1st January, 2018 until 31st December,2022.On appeal, the appellant contested that TCRA erred in issuing the interconnection determination No. 5 of 2017

without considering required criteria set out under the law; without determining that there is a market failure as required by the law; without applying appropriate remedies to address market failure which will not lessen competition; failing to give reasons for its decision and contravening its duties to promote effective competition and economic efficiency, among others.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 17.12.2019):

- **i.** Market failure can be established either by conducting an inquiry or if the network providers do not agree on the interconnection rates until when about to expire then TCRA is empowered to regulate interconnection rates as a matter of necessity.
- **ii.** The duration of 2 days that remained to reach expiration of 2013 interconnection rates was reasonable for TCRA's intervention.
- **iii.** TCRA's intervention complied with the requirements of the law which demands that it conducts an inquiry prior to making a decision.
- **iv.** Appellant failed to demonstrate sufficiently how the new interconnection rates are commercially not feasible considering five out of eight telecommunication network operators agreed with the rates; and how it will negatively impact the market.
- **v.** TCRA provided reasons for its decision and the position of the appellant and other network operators on the adoption of new rates using a glide path were considered in reaching the decisions.
- **vi.** TCRA considered all factorsrequired by the law but have a duty of weighing the factor effects thus, its decision complied with both TCRA Act and Interconnection Regulations under EPOCA.

Appeal dismissed with costs.

92. JOSHUA K. NDOSSI V. TANESCO& EWURA – APPEAL NO. 18/2018

Appeal filed on 13.08.2018 against the decision of EWURA in which EWURA dismissed the complaint by the appellant claiming for compensation from the 1st respondent for the fire accident that destroyed the Appellant's house wherein the Tribunal *suo motto* raised a concern on the propriety of the notice of appeal.

DECIDED (Hon. J. Magoiga, S.M., Phillip, B.K., Mkapa S., – 17.12.2019):

i. The prescribed form for the notice of appeal in FCT rules requires a party to fill in the date the decision appealed against was given unto her or him i.e. pronounced/delivered to the parties.
ii. The failure to insert the correct date in the notice due to ignorance of the law or negligence on the part of the advocate cannot be an excuse for contravention of the law.
iii. Notice of appeal was filed out of time in contravention of rule 9(2) of the FCT Rules, 2012.

Appeal struck out.

93. MSABILA M. MATANDULA V. MIC TZ. LTD & TCRA – APPEAL NO. 9/2019

Appeal filed on 26.07.2019 against the decision of TCRA wherein the 2nd respondent raised a preliminary objection to the appeal on the ground that the appeal is incompetent for failure to comply with rule 11(6) of the FCT Rules, 2012 as it lacks pleadings and proceedings.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 30.04.2020):

i. Rule 11(6) of the FCT Rules, 2012 provides no exception to the requirement to annex copies of pleadings, proceedings and decision complained of.
ii. Not being supplied with the copy of proceedings by the time of lodging the appeal does not provide an automatic right to file an appeal with incomplete records.

Appeal rejected with costs.

94. ABBAS LYAQUAT DHANKER t/a TRONIC LIGHT CENTRE V. CHIEF INSPECTOR OF MERCHANDISE MARKS ACT- APPEAL NO. 15/2019

Appeal filed on 11.10.2019 against the decision of the Chief Inspector at FCC in which the Chief Inspector seized goods of the appellant for allegedly being counterfeit by bearing a mark "CTORCH" which resembles a registered mark "TORCH". The Committee established by the respondent heard the claim and upheld the seizure notice by finding that goods were counterfeited hence the appeal. Grounds of appeal, among others, were that the respondent erred in law and fact in holding that the brand

"CTORCH" was not registered with BRELA; in upholding the seizure notice which was based on complaint from a non registered owner of "TORCH"; and in failing to evaluate the appellant's evidence.

DECIDED (Hon. J. Magoiga, S.M., Siyani M.M., Dr. Mwenegoha T., – 30.04.2020):

- **i.** There is no evidence on record that "CTORCH" was a registered mark.
- **ii.** Registration of "CTORCH" would not be valid as there is already "TORCH" as a registered mark of products of the same nature due to the prohibition of registration of identical or resembling mark.
- **iii.** The claim that the complaint was from a non-registered trade mark owner cannot be heard on appeal as it was not raised before the respondent.
- **iv.** The respondent can entertain any complaint from any person under section 3 of the Merchandise Marks Act.
- **v.** Declaration that Nana Focus Co. Ltd was the exclusive owner of the brand "TORCH" in Tanzania is correct and supported by evidence on record.

Appeal dismissed with costs.

95. TANESCO V. MRISHO M. SAID & EWURA – APPEAL NO. 11/2019

Appeal filed on 19.08.2019 against the decision of EWURA in which EWURA ordered the appellant to reflect the change of tenants occupying the premises leased by NHC house in their system without shifting the debt from the previous tenant to the incumbent tenant and connect electricity services to the premises. The appeal was filed on the grounds that EWURA erred in law in reaching its decision and improperly assessed the evidence adduced during hearing.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Phillip, B.K. – 04.05.2020):

1. A point of preliminary objection has to be raised at the earliest time before hearing with exception of the preliminary objection on jurisdiction which can be raised at any time even on appeal; time limit in instituting a complaint is not a matter of jurisdiction as it does not involve the powers to entertain the matter, thus, preliminary objection on time limit cannot be raised on appeal.

2. The basis of the decision is that the 1st respondent is not obliged to pay the outstanding electricity bill since he did not consume that electricity subject of the said outstanding bill thus; no justification to fault the decision.
3. Appellant directed to sign a contract for supply of electricity in the premises with the 1st respondent and supply the services without demanding payment of outstanding debt and connection fees since infrastructures are already in place.

Appeal dismissed with no orders as to costs.

96. WATETEZI ONLINE TV V. TCRA – APPEAL NO. 13/2019

Appeal filed on 01.10.2019 against the decision of TCRA in which the appellant was accused of operating without Online Policy or Guidelines in violation of Regulation 5(1)(c) of EPOCA (Online Content) Regulation, 2018 and was ordered to pay fine of Tshs. 5M and received a warning. The appeal was based on the grounds that TCRA erred in law in relying on the wrong provision of the law in reaching the decisions; acted beyond its power; and convicted a nonexistent entity.

DECIDED (Hon. J. Magoiga, S.M., Siyani M., Dr. Mwenegoha, T. – 04.05.2020):

1. TCRA was wrong to impose fine based on regulation 18 of EPOCA (Online Content) Regulation, 2018 which vests such powers on the courts of law with criminal jurisdiction.
2. Tribunal can give consequential orders to meet the end of justice under rule 35(1) (a) read together with rule 38(d) of the FCT Rules, 2012 as such substituted the order for a fine from 5M to 3M which is based under section 44 (2) (b) and (g) of the TCRA Act, 2017.
3. Name used by TCRA i.e., Watetezi Online TV is proper as is not a new name from Tanzania Human Rights Defenders Coalition and raising at as point of preliminary objection on appeal is improper since the Tribunal exercising appellate jurisdiction cannot entertain a matter or issue that was not dealt with at trial stage.

Appeal partly allowed with no order as to costs.

97. DISTELL GROUP LIMITED V. FCC – APPEAL NO. 19/2017

Appeal filed on 30.11.2017 against the decision of FCC in the matter of merger application between Anheuser-Busch Inbev SA/NW and Tanzania Distillers Ltd (TDL) through SABMiller Plc and Tanzania Breweries Ltd (TBL) with intention to acquire SABMiller Plc. FCC issued a public notice inviting submissions against the merger as required by the law. Appellant submitted her objection against the merger on the reason that TDL and TBL are competitors. FCC held that shareholders of TDL (TBL and the appellant) were competitors thus, declared the shareholding agreement *void ab initio*, and nullified appellant's pre-emptive rights set out in the agreement. On appeal the appellant asked the Tribunal to set aside the decision of FCC on the ground of denial of an opportunity to be heard and validity of the shareholding agreement.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Phillip, B.K. – 06.05.2020):

- **i.** Hearing procedures in FCC is inquisitorial thus is not bound by the formal rules of evidence and is not strictly in the form of hearing in courts of law, accordingly the appellant was duly heard on the shareholder agreement.
- **ii.** The shareholding agreement was thoroughly discussed in the proceedings and was found to have coherent competition concern on which the appellant proposed amendment or rectification through divestiture thus FCC was justified to deal with it and declaring the same *void ab initio*.
- **iii.** FCC gave reasons for declaring the shareholding agreement *void ab initio*; same reasons apply to the resultant pre-emptive rights which are embedded in the agreement and nullified by the decision of FCC.
- **iv.** FCC's decision that the shareholders of TDL and appellant are competitors is based on the evidence on record.
- **v.** FCC has powers to deal with the shareholding agreement which was entered before coming into existence of the Fair Competition Act, 2003as provided under section 100 of the Act.
- **vi.** The appellant failed to make an application for exemption of the shareholding agreement or for it to be treated as an exception under sections 12 and 14 of the Fair Competition Act, 2003 hence, when the agreement was brought to the attention of FCC in the course of dealing with the merger application, FCC could not leave it while is in conflict with the law.

Appeal dismissed with costs.

98. JOSHUA K. NDOSSI represented by MRS. ELIAMANI NDOSSI V. TANESCO & EWURA – APPLICATION NO. 9/2020

Application for extension of time to file notice of appeal and memorandum of appeal out of time against the decision of EWURA. Grounds adduced in support of the application was that the applicant filed an appeal which was struck out for being out of time caused by the confusion in the delivery of the award which was delivered first time in Dodoma in June, 2018 and second time in Arusha in July 2018; the impugned decision had material irregularities and illegalities; and the applicant had to self isolate due to COVID-19 thus he could not instruct his client until after he had fully recovered.

DECIDED (Hon. J. Magoiga, S.M., Phillip, B.K., Dr. Mwenegoha, T. – 14.08.2020):

- **i.** The delay is a technical delay caused by the confusion in the delivery of the award which caused the striking out of the notice of appeal that, in actual fact, was within time.
- **ii.** Technical delay is a sufficient cause for extension of time if the applicant shows diligence in pursuing the matter.

Application granted with no orders as to costs.

99. PASCHAL MUSHI & SABINA SUNGURA V. TANESCO & EWURA – APPEAL NO. 12/2019

Appeal filed on 27.08.2019 against the decision of EWURA in which the appellants claim for payment of Tshs. 200M being compensation for the house and household items destroyed by fire caused by the 1st respondent was dismissed for want of merits by EWURA. The grounds of appeal raised by the appellants were that EWURA erred in law and facts by failing to consider evidence on the source of fire showing negligence on the part of the 1st respondent and the primary evidence of the eye witness.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 13.08.2020):

1. The record shows that evidence of the appellant was hearsay as such EWURA was correct to disregard it for being inadmissible evidence and of no value.
2. The appellants' evidence contradicted itself as such unreliable in establishing the source of fire thus; the appellants claim was not proved on balance of preponderance.
3. The appellants failed to prove that the 1st respondent was negligent hence they are not entitled to any kind of compensation as duly decided by EWURA.

Appeal dismissed with no order as to costs.

100. KWANZA BROADCASTING LTD t/a KWANZA ONLINE TV V. TCRA – APPLICATION NO. 6/2020

Application for extension of time to file notice of appeal against the decision of TCRA. Ground adduced in support of the application was that the delay was out of control of the applicant following rejection of his appeal on reasons of incompetency in law for failure to comply with FCT Rule 11(3) and (6) and illegality of the decision to be appealed against.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 14.08.2020):

iii. The applicant has not accounted for 21 days of delay after being supplied with the necessary documents.
iv. The allegation that there is a point of illegality in the impugned decision is a mere allegation which cannot move this Tribunal to grant the application.
v. Plea of illegality alone cannot be a sufficient reason as it is subject to diligence by accounting for each day of delay.

Application dismissed with costs.

101. CHARLES EDWARD NG'HWAYA V. MD, VODACOM (T) PLC & DG, TCRA – APPEAL NO. 5/2019

Appeal filed on 16.04.2019 against the decision of TCRA wherein TCRA found the complaint lodged by the appellant against Vodacom (T) PLC to

the effect that Vodacom (T) PLC blocked communication in the modem purchased by the appellant which resulted into damages to the appellant baseless and of no merit. The appellant then preferred the appeal against MD, Vodacom (T) PLC and DG, TCRA who were not parties to the complaint. The respondents raised preliminary objection on the competence of appeal as it is against wrong parties.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Phillip, B.K. – 14.08.2020):

- **i.** The point raised by the respondents qualifies to be preliminary objection as it is able to dispose of the matter before the Tribunal completely.
- **ii.** FCT Rules requires TCRA to be joined as a necessary party and not DG due to the existence of separate legal personality thus, DG was improperly joined.
- **iii.** MD, Vodacom (T) PLC was not sued before TCRA hence cannot prefer an appeal against him unless the corporate veil is lifted.
- **iv.** Amendment of pleadings cannot be sought when a preliminary objection has been raised as it would amount to pre-empting the same.

Appeal rejected; costs be shared.

102. M/S. TONNERBYTES & SUPPLIES LTD V. M/S. I.S.M. STATIONERY LTD & THE CHIEF INSPECTOR OF MERCHANDISE MARKS ACT – APPEAL NO. 17/2019

Appeal filed on 07.11.2019 against the decision of the Chief Inspector at FCC in which the Chief Inspector, acting on a complaint from the Appellant on counterfeit goods in the brand of "Focus" allegedly being sold by the 1st respondent, raided the 1st respondent stores and seized 118 cartons of counter books. The 1st respondent denied that he was selling counterfeited goods in the hearing before the Committee formed by the Chief Inspector which decided that the seized goods were not counterfeited goods and ordered return of the same hence the appeal. Grounds of appeal, among others, were that the Committee erred in law and facts by holding that the appellant is not a registered trademark owner of the mark "Focus" thus has no exclusive rights over it; failing to consider and appreciate the evidence by the appellant; and failing to determine that the goods were counterfeited.

DECIDED (Hon. J. Magoiga, S.M., Siyani M., Philip B.K., – 06.08.2020):

- **i.** The Committee erred in law and fact for holding that the appellant is not a registered trade mark owner in Tanzania against the strong evidence on record to the contrary.
- **ii.** The seized good were counterfeited goods.
- **iii.** The decision of the Committee disregarded evidence on record.

Appeal allowed with costs.

103. ZENGCHEN BENMA INDUSTRIAL CO. LTD V. WHO ZHOU INVESTMENT CO. LTD & FCC – APPEAL NO. 1/2020

Appeal filed on 17.01.2020 against the decision of FCC in which the Chief Inspector, acting on a complaint from the Appellant's advocate on counterfeit goods in the registered brand name "SanLG Motors", searched and seized allegedly counterfeited goods stocked by the 1st respondent. The 1st respondent denied that the goods were counterfeited in the hearing before the Committee formed by the Chief Inspector which decided in favour of the 1st respondent hence the appeal. Grounds of appeal, among others, were that FCC erred in law and facts by failing to consider that the 1st respondent used the appellant's trademark illegally; failing to decide on whether or not the goods were counterfeited; and failing to consider the evidence tendered by the appellant.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 30.04.2020):

- **i.** The evidence on record clearly shows that the hearing committee erred in not deciding on the issue of counterfeit while there was clear evidence that the 1st respondent was selling counterfeited goods.
- **ii.** The counterfeited goods to remain at the disposal and dealing of the Chief Inspector in accordance with the law.
- **iii.** Prayer for general damages declined for want of justification.

Appeal allowed in its entirety.

104. TANESCO V. ABDUL AZIZ B. NGOMUO & EWURA – APPEAL NO. 5/2020

Appeal filed on 31.03.2020 against the decision of EWURA in which EWURA acting on a complaint from the 1st respondent ordered TANESCO to restore the 1st respondent to tariff category D1 from tariff category T1. Grounds advanced in support of appeal were that EWURA made the decision in an error of the law and basing on improper assessment of evidence.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 11.08.2020):

- **i.** Once the 1st respondent did not pass the qualification of paragraph 10(h) of the TANESCO Tariff Adjustment Order, 2016 G.N. 119-2016, it was a misconception to apply paragraph 10(i) of the Order because it was inapplicable thus, EWURA decided in error of the law.
- **ii.** The award granted to the 1st respondent is not supported by any evidence since he did not qualify and his complaint was not worth to be entertained.
- **iii.** Orders of EWURA quashed and substituted with orders that tariff category D1 is for new single phase domestic customers in rural areas; paragraph 10(i) of the Order only qualifies condition in 10(h) of the Order in the event customer from rural areas who is connected to tariff D1 consumes more than 75 KWh units in three consecutive months is to be transferred to tariff category T1 which is a general user category without usage limitation; and transfer from D1 to T1 is one way and permanent.

Appeal allowed with no order as to costs.

105. SIX TELECOMS CO. LTD V. TCRA – APPEAL NO. 2/2020

Appeal filed on 27.02.2020 against the decision of TCRA cancelling licence of the appellant for non-compliance with the terms of the licence hence the appeal wherein TCRA raised a preliminary objection that the appeal is incompetent for failure to comply with Rule 11 (1), (3) and (6) of FCT Rules, 2021 as it is out of time and lacked proceedings.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Mkapa, S. – 11.08.2020):

- **i.** The decision to cancel the licence was done in 2015 and the appellant neither preferred an appeal nor applied for extension of time to file an appeal against the decision thus, time barred to appeal after 5 years when TCRA decides to execute its decision.

ii. The cancellation notice is merely an execution order of the 2015 decision not a separate decision thus, not appealable to the Tribunal.

Appeal dismissed with costs.

106. FUEL MASTER TZ LTD V. STAR OIL TZ LTD & EWURA – APPLICATION NO. 5/2020

Application for extension of time to file notice of appeal against the decision of EWURA. Ground adduced in support of the application was that the applicant's principal officer felt sick thus could not file the notice of appeal. In the course of hearing the application the Tribunal *suo motto* probed the parties on whether EWURA has jurisdiction to deal with breach of contract matters in the regulated activities.

DECIDED (Hon. J. Magoiga, S.M., Chidowu, D.L., Dr. Mwenegoha, T. – 11.08.2020):

vi. Sickness, when proved, is a good and sufficient cause to grant extension of time, however, the applicant has not accounted for 23 days of delay after sickness was over.

vii. Given the circumstances of the case, it is imperative to consider the maintainability of the decision of EWURA on the legal point of jurisdiction to deal with breach of contract matters.

Application granted with no order as to costs.

107. FRED JAPHET CHENZA V. TANESCO & EWURA – APPEAL NO. 4/2020

Appeal filed on 27.02.2020 against the decision of EWURA in respect of a complaint by the Appellant demanding compensation from the 1st respondent for damages caused by fire accident that gutted down the house of the Appellant in which the 2nd respondent dismissed the complaint for want of merits hence the appeal. Grounds advanced in support of appeal were that EWURA erred in basing its decision on the evidence of the 1st respondent against the principles of natural justice; disregarding the evidence of the appellant and finding that the source of fire is unknown.

DECIDED (Hon. J. Magoiga, S.M., Mkapa, S., Dr. Mwenegoha, T. – 12.08.2020):

i. Parties were given right to present their case and the evidence on record show that the evidence of both the appellant and the respondent were considered in reaching the decision.
ii. The appellant's evidence on the source of fire was insufficient.
iii. There is no strong evidence adduced before EWURA showing the source of fire thus, EWURA was justified to decide as it did.

Appeal dismissed with no order as to costs.

108. ZENGCHEN BENMA INDUSTRIAL CO. LTD V. WHO ZHOU INVESTMENT CO. LTD & FCC – APPLICATION NO. 10/2020 (REVIEW)

The 1st Respondent (Who Zhou Investment Co. Ltd) applied for review of the decision of the Tribunal in Appeal No. 1/2020. The application was found to be defective in form for wrong citation of parties whereas the actual applicant was cited as the 1st Respondent and the actual respondents was cited as appellants and 2nd Respondent.

DECIDED (Hon. J. Magoiga, S.M., Mlyambina, Y.J., Dr. Mwenegoha, T. – 12.08.2020):

i. The application is incompetent and defective in form.
ii. Leave to refile cannot be granted to defective application as that will amount to condoning its existence.

Application struck out with costs.