

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CIVIL CAUSE NO. 28 OF 2011

**In the matter of an application by Michael Thomas Nyungi for leave to
apply for orders of *certiorari* and *mandamus***

And

**In the matter of the decision of the ENERGY AND WATER UTILITIES
REGULATORY AUTHORITY**

Between

MICHAEL THOMAS NYUNGI APPLICANT

VERSUS

**ENERGY AND WATER UTILITIES
REGULATORY AUTHORITY 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT**

R U L I N G

F. Twaib, J.

By letter dated 1st July 2009, the Applicant lodged a claim with the Energy and Water Utilities Regulatory Authority (EWURA) against the Tanzania Electric Supply Co. Ltd. (TANESCO) alleging that his house had been destroyed by fire as a result of an electric fault caused by TANESCO. He thus raised a claim for compensation for the damage. After hearing both the Applicant and TANESCO, the Respondent's Board of Directors delivered an Award in which it dismissed the Applicant's claims.

Dissatisfied with the decision, the Applicant has filed the present Application against EWURA (the 1st Respondent) for leave to apply for the prerogative orders of *certiorari* and *mandamus*. The 2nd respondent is the Attorney General, who has been joined as a necessarily party in compliance with section 18 (1) of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act**, Cap 310 (R.E. 2002).

The 1st Respondent has raised a point of preliminary objection to the effect that the decision being sought to be reviewed is appealable in terms of section 29 (1) of the **EWURA Act**, Cap 414.

On 10th October 2012, in the presence of Mr. Madaha, learned advocate for the appellant, Mr. Ngaleba, learned advocate for the 1st respondent and Mr. Rashid, learned State Attorney for the 2nd Respondent, and upon all counsels' consent, I ordered that the preliminary objection be disposed of by way of written submissions. I drew up a schedule for the filing of the said submissions. Mr. Ngaleba for the 1st respondent duly filed his submissions, but the applicant's counsel has not filed any to date.

Mr. Ngaleba has relied on the provisions of section 29 (1) of the EWURA Act, and the decision of the Commercial Division of this Court (Makaramba J.) in *Njake Enterprises & Oil Transport Ltd. v EWURA*, Commercial Case No. 3 of 2010. Section 29 (1) of the **EWURA Act** provides as follows:

Any person aggrieved by the decision of the Internal Review Committee or any other decision made in connection to the purposes of this Act may, appeal to the Fair Competition Tribunal.

In *Njake Enterprises & Oil Transport Ltd. v EWURA*, Makaramba J, dealt with a number of issues that arose in the particular circumstances of that case and which were argued by counsel. The case involved a decision by EWURA that was the result of EWURA's exercise of the powers under section 39 of the **EWURA Act**, under which it makes compliance orders, as opposed to when EWURA makes a decision on a dispute between a consumer of services and a supplier, as is the case herein.

Makaramba J also dealt with section 29 (1) of the EWURA Act, which is also relevant in this case. However, *Njake Enterprises* is distinguishable from the present in one respect: the impugned decision in that case was a decision by EWURA's officers acting on behalf of EWURA under delegated powers.

Having been made by an employee or employees acting on behalf of EWURA under delegated powers, the decision was, by virtue of section 27 (3) of the EWURA Act, subject to review by an Internal Review Committee. The Committee is empowered to dismiss the application, set aside and substitute it with a different decision, vary the decision, or set it aside and delegate the matter to a division or to one or more members of its officers for a fresh decision.

The decision of the Internal Review Committee is in turn subject to the Fair Competition Tribunal (FCT), in terms of section 29 (2) of the EWURA Act. The decision of the FCT is final: section 5 (1) of the Fair Competition Commission Act, Cap 285.

Hence, the *ratio decidendi* of Justice Makaramba's decision in *Njake Enterprises* was that the Applicant, having been aggrieved by the substantive decision of EWURA's officers made on behalf of EWURA under delegated powers was supposed to have asked for a review of the decision, whereupon EWURA would have appointed an Internal Review Panel. That decision would then have been subject to an appeal to the FCT, whose decision would be final.

In the case at hand, the decision was made by the Board of Directors, the highest organ within EWURA, and thus not a decision made under delegated authority so as to be subject of an Internal Review Committee. It can only be termed a substantive decision made by EWURA itself, and therefore, only subject to an appeal to the FCT. This was the *obiter dicta* in Makaramba, J's decision in *Njake Enterprises*.

I see no reason to depart from the holding of Makaramba J in *Njake Enterprises*. Though *obiter* in *Njake Enterprises*, his holding is sound in law and is in all fours with the circumstances of the present case. Hence, I adopt it as the *ratio*

"ORIGINAL"

decidendi in this case: The applicant should have appealed from the decision of the EWURA Board of Directors to the FTC instead of coming to this Court for prerogative orders.

In the event, the application stands dismissed with costs.

DATED and DELIVERED AT DAR ES SALAAM this 16th day of May 2013.

F. Twaib

Judge