

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

MISCELLANEOUS CIVIL CAUSE NO. 163 OF 2010

IN THE MATTER OF THE ENERGY AND WATER UTILITIES REGULATORY
AUTHORITY ACT, CAP. 414 OF THE LAWS REVISED EDITION, 2002

AND

IN THE MATTER OF ENFORCEMENT OF A COMPLIANCE ORDER

BETWEEN

ENERGY AND WATER UTILITIES

REGULATORY AUTHORITY APPLICANT

AND

1. TRUCK LINK LIMITED t/a Msufini Filling Station

a.k.a Mlandizi Filling Station

a.k.a Kongowe Filling Station

1ST RESPONDENT

2. MR. AHMED JAMAL

2ND RESPONDENT

The date of Last Order: 30/11/2015

Date of Ruling: 29/01/2016

EX-PARTE RULING

FELESHI, J.:

The Applicant has moved this Court in terms of sections 39(2), (4) & (6) and 42 of the Energy and Water Utilities Regulatory Authority Act, [CAP. 414 R.E, 2002], sections 124 of the Penal Code, [CAP. 16 R.E, 2002] and 68(c) of the Civil Procedure Code, [CAP. 33 R.E, 2002] for the prayers that; summons to be issued to the second respondent who is the director of the 1st respondent to show cause why the respondents should not be penalized for disobeying the applicant's compliance order dated 01/04/2009; to impose the prescribed penalties to the respondents for contempt of the applicant's compliance orders; and the Court to grant costs and any other remedies that the Court deems just to grant.

An affidavit sworn by JULIUS GASHAZA, the Chief inspector duly authorized by the applicant stated that, on 20th and 23rd day of March, 2009, the applicant's inspectors visited the station styled in the 1st respondent nature for the purposes of checking compliance to health and environmental standards and adjoining backyard. In such visit, they found the respondents operating a backyard facility illegally whereas the station was non operational. He added that, the backyard facility was operating illegally contrary to the laws governing operation of petrol station.

Besides, on 01/04/2009, the respondents were issued with a compliance order directing them to stop all operations and activities on the backyard of the station and show cause why they should not be penalized for the illegal operations. On 11/04/2009, the respondents were found operating the backyard contrary to the Order issued by the applicant. This was also the case when the inspectors made another visit to the station on 05/09/2009, the status that has continued to persist.

Hearing of the Application was conducted by way of written submissions. Despite the service, the respondents never entered appearance hence this Court ordered the hearing of the application to proceed *ex-parte*. To argue for the application, the applicant was represented by the M/S Ngalo & Company Advocates. The Court order was complied with hence this Ruling.

The applicant's counsel submitted that persistence of the backyard illegal operations were intentional in breach of the order by the applicant without any legal justification from a legal authority. He added that, the

applicant has proved non compliance vide the certified certificate under section 39(6) of the Energy and Water Utilities Regulatory Authority Act (supra) thus seeking for enforceability through an Injunction of the Court.

It is on record and as correctly submitted by the applicant's counsel that, the applicant filed a Compliance Order in terms of section 39 of the Energy and Water Utilities Regulatory Authority Act (supra) and section 19 of the Petroleum Act, 2008. It is also not disputed that, the respondents were served with the said Compliance Order which they did not comply with. Proof of the Compliance Order suffices as is made clear under section 39(6) of the Energy and Water Utilities Regulatory Authority Act (supra) which provides:-

“(6) Notwithstanding any law to the contrary, the provisions of this Act where an order or a certified certificate is produced or submitted to the High Court, the order or a certificate shall be conclusive proof of its making by the High Court and of the facts to which it relates”.

From the above facts in synopsis, it is clear that the leveled allegations and proof did not encounter any objection from the respondents. This is exhibited by their failure to resist the application in Court despite being dully served with the pleadings.

Besides, as correctly submitted by the applicant's counsel, after the Compliance Order, the respondents were obliged to comply with that order under section 39(1) & (2) of the Energy and Water Utilities Regulatory Authority Act (supra) which provides:-

“(1) Where the Authority is satisfied that a person has committed or is likely to commit an offence against this Act or a sector Act it may make a compliance order under this section.

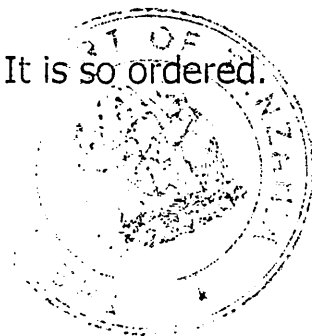
(2) Any person against whom a compliance order is made shall comply with the order.

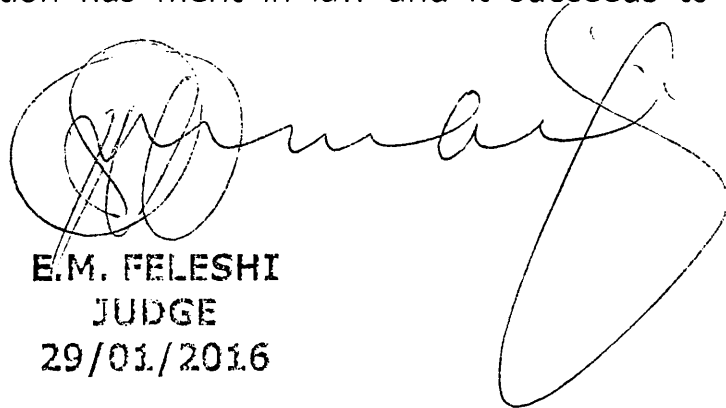
Failure to comply has the consequences of the applicant filing an application for enforcing that order in the form of Injunction against the wrongdoers under section 39(4) of that Act (supra) which reads:-

"(4) A compliance order shall be made in writing specifying the grounds for its making and shall be enforceable as an injunction of the High Court".

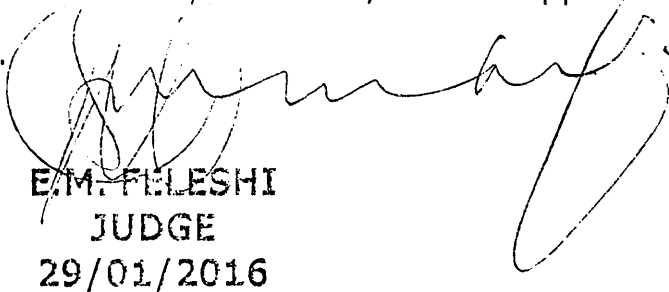
Thus, in a nutshell, an Injunction is hereby entered against the respondents barring them from conducting fuel business at the respective Petrol Station(s). Besides, the respondents are ordered to pay a fine of Tshs. 3,000,000/= (Tanzanian shillings three million) in terms of section 42(1) of the Energy and Water Utilities Regulatory Authority Act (supra). In that regard, the application has merit in law and it succeeds to the above extent with costs.

It is so ordered.




E.M. FELESHI
JUDGE
29/01/2016

Ruling delivered in Chambers this 29th day of January, 2016 in presence of Mr. Timothy Mwakisambwe, Advocate, for the Applicant in the absence of the Respondents.


E.M. FELESHI
JUDGE
29/01/2016