

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC CIVIL APPLICATION NO. 18 OF 2014

ENERGY AND WATER UTILITIES

REGULATORY AUTHORITY (EWURA).....APPLICANT

VERSUS

MOHAMED HASSAN T/A OILCOM NASSOR -

DODOMA SERVICE STATION.....RESPONDENT

RULING

25/10/2016 & 14/12/2016

A. MOHAMED, J.

The applicant is a regulatory authority for energy and water utilities (EWURA) whilst the respondent is a service station operator trading as Oilcom Nassor Dodoma Service Station. The application was brought under section 35(1) and 3, section 39 (2), (4) and (6) of the Energy and Water Utilities Regulatory Authority Act [Cap 414 RE 2009] and sections 68 (c) and (e) together with section 95 of the Civil Procedure Code [Cap 33 RE 2002]. It seeks this court to find the respondent in contempt of EWURA's order; to order the respondent to show cause why he should not be committed as a civil prisoner or punished for contempt of EWURA's order and costs of the application to be borne by the respondent. The application was argued by way of written submissions.

In support of the application, the applicant submitted at length that it issued two compliance orders to wit **Annexure EWURA-1 EWURA-2** and **EWURA-6** on 23/1/2013 following EWURA's discovery of the respondent's sale of adulterated petroleum products at his petrol station in Dodoma. He went on to say the respondent was immediately stopped on both occasions from undertaking any petroleum products operations. And that the respondent paid fines on both occasions. He went on to say on the second occasion, EWURA ordered the respondent to keep the petrol stations closed until he submitted to the applicant a certified copy of a title deed or any other authorization approving the area to be used for petrol station purposes, this being part of pre-licensing conditions. EWURA complains the respondent has failed to submit the said documents and continues operating his business in contravention of EWURA's order contained in its letter dated 17/4/2014 addressed to the respondent.

In his reply submissions, the respondent maintained that upon receiving allegations of selling adulterated petroleum products from EWURA to wit **Annexure EWURA-3**, he complied with that order by paying a fine of 7 million shillings to avoid business inconvenience. He went on to say that he paid a further fine of 7 million shillings in respect of EWURA's compliance order of 13/4/2013 (**Annexure EWURA-5**) which reads partly ;

"Please be informed that selling or offering for sale non-conforming petroleum product contravenes the Petroleum (Marketing and Quality Control) Rules 2010... you are required to pay a fine of 7 million shillings only. Please take further note that this matter has been forwarded to the Tanzania Revenue Authority (TRA) for further action including recovery of statutory taxes. Therefore your petrol station will only be re-opened after paying EWURA (sic) fine and upon receiving confirmation from TRA on custom clearance."

The respondent submitted that he complied with the said order by payment of the said fine and had consequently obtained the necessary clearance from the TRA as was instructed by the applicant. He observed that he had accordingly been punished for the alleged non compliance of EWURA's order. He added that following the payment of the fine, EWURA acknowledged that compliance in their **Annexure EWURA- 6** where the applicant admitted that;

"EWURA acknowledges that you have paid the requisite fine of TZS 7,000,000/= and cleared the matter with the Tanzania Revenue Authority."

It was the respondent's argument that the EWURA's request of the submission of the title deed in respect of the respondent's petrol

station was neither in EWURA's compliance order (**Annexure EWURA-5**) (and was therefore *ultra vires*), nor was it a pre-condition for issuance of a license by EWURA as it had already issued the same to the respondent.

Lastly the respondent submitted the owner of the said property is Chama cha Mapinduzi (CCM) which wrote a letter to the applicant (**Annexure OC-2**) informing EWURA that it is the owner of the said property and had entered an agreement with the respondent to run the petrol station.

In the applicant's rejoinder submissions, he reiterated that the offended compliance order is **Annexure EWURA- 2** which ordered the respondent to stop selling petroleum products as well as required him to give an explanation within 7 days why severe punishment should not be taken against him for selling or offering for sale out of specification petroleum products. The applicant admitted the respondent complied with the compliance order (**Annexure EWURA-5**) but failed to comply with the order in **Annexure EWURA-6**, to wit submission of a title deed of the property, which he reiterated was a condition for re-opening of the petrol station. Lastly he was of the view EWURA cannot order compliance against Chama cha Mapinduzi (CCM) but it has the authority to do so against the respondent.

After hearing the parties' contentions and upon consideration, two questions arise for this court's determination. The first is whether

the respondent failed to comply with the compliance order **Annexure EWURA-2**; and secondly whether **Annexure EWURA-6** was a compliance order at all.

In regard to the 1st question, I am satisfied the respondent fully complied with the compliance order marked **Annexure EWURA-2** by payment of the 7 million shilling fine to the Tanzania Revenue Authority which was acknowledged by the applicant leading to the re-opening of the respondent's petrol station. The applicant had required the respondent to pay the fine and seek clearance from the TRA. I am content that the respondent conformed to the applicant's order by paying the fine as well as seeking the necessary clearance from the TRA which was acknowledged by the applicant.

As to the 2nd question, I am satisfied the letter dated 17/4/2014 with reference EWURA/42/280/32 was not a compliance order within the meaning of the relevant provisions of the **Energy and Water Utilities Regulatory Authority Act [Cap 414 RE 2009]**. It was simply a letter addressed to the respondent requiring the latter to submit a copy of a title deed of the property or any other authorization approving the use of the area for petrol station purposes. I am therefore satisfied with the respondent's explanation that he does not have possession of the title deed of the property as it is owned by Chama cha Mapinduzi (CCM). It is also clear the submission of a copy of the title deed to the applicant was not a pre-condition for

issuance of a licence to the respondent as the respondent already had one and had been operating for some time.

I also note Chama cha Mapinduzi (CCM) wrote a letter (**Annexure OC-2**) to EWURA's Director General dated 10/9/2016 with ref CCM/F.20/69/54 explaining that they are the owners of the said property and allowed the respondent to operate it. I am of the view that letter meets the applicant's request for a title deed or any authorization approving the use of the area for petrol station purposes.

After the foregoing, I find the application is both devoid of merit and was mala fide. I accordingly dismiss it with costs

It is so ordered.



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A. MOHAMED
JUDGE
14/12/2016

The right of appeal explained.



A handwritten signature in blue ink, appearing to be "A. Mohamed".

A. MOHAMED
JUDGE
14/12/2016