

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 18 OF 2009
BIN FIJAA INDUSTRIES LIMITED.....PLAINTIFF
VERSUS
TANZANIA ELECTRIC SUPPLY CO Ltd.....DEFENDANT

JUDGMENT.

Mruma J.

The plaintiff **M/S Bin Fijaa** industries limited is claiming against the defendant Tanzania Electric Company Limited famous known as **TANESCO** for a declaration order that the plaintiff has dully paid for electricity consumption for the period of **September 2004 to July 2008** and for permanent injunction against the defendant to claim from it Tshs. **95,023,753.08** as undercharged amount for the said period in respect of account meter number **11.03.57101.**

The plaintiff further claims for general damages to be assessed by the court, interest on the said damages from March 2009 to the date of judgment together with **7%**

interest from the date of judgment till final satisfaction. It also prays for costs of the suit and the usual final chorale of "any other relief this court deems proper and fit to grant".

The Plaintiff is a limited liability company with its registered office here in Dar es Salaam while the Defendant is a body corporate established under the Electricity Act, Cap.131 of 2002 revised edition of the Laws.

It is undisputed fact that the plaintiff entered into an agreement with the defendant for the supply of electricity to its premises plant since 2003. Electricity started to be supplied and it is undisputed fact also that the plaintiff started to discharge its monthly bills. It wasn't until the year 2009 in the month of February that he received a letter from the defendant informing it that its account above mentioned had been wrongly charged the periods of September 2004 to July 2008 attracting additional charges of **95,023,753.08**. The plaintiff was required to pay that amount in six equal instalments starting from March, 2009. The plaintiff was aggrieved and decided to avail itself to judicial machinery for justice.

The defendant in its written statement of defence denied any liability towards the plaintiff and stated that the charging of the electricity into the wrong tariff was occasioned by the plaintiff's act of concealing necessary and important information that the defendant required for proper assignment for assignment of correct tariff. The defendant further states that the wrong tariff assigned to the plaintiff caused under charge to the tune of Shillings 95,023,753.08 which the plaintiff is liable to pay to the defendant. The defendant did not however raise it as a counter claim.

At commencement of the hearing, four issues were agreed by the parties and adopted and recorded by the court. The issues are:-

1. Whether the plaintiff has been observing well his obligation to pay electricity bills as presented by the defendant.
2. Whether the wrong tariff assigned by the defendant was occasioned by any act of the plaintiff.
3. Whether the defendant is justified to claim for any undercharged amount.

4. What reliefs are the parties entitled to.

I will deal with these issues sequentially.

1. The first issue is whether the plaintiff has been observing well his obligation to pay electricity bills as presented by the defendant.

Mr. Abdalah Ally (PW.1) was the sole plaintiff's witness. He testified that from the time when his factory was connected and provided with electricity he paid all monthly consumption bills as required and demanded by the defendant. He told the court that the payments were made after the meter reading which was conducted by the defendant's officers every month. This assertion has not met any serious challenge from the defendant. Jenes Kakore DW1 simply explained types of classes of customers they have and how they are classified. He said that before connecting electricity to a customer they inspect his premises and uses and decide which tariff should be assigned to the customer.

That was the evidence for and against the plaintiff's case.

It has been submitted for the defendant that the plaintiff concealed its load and led to its being undercharged and therefore it was not paying its proper bills.

I do not agree. In my view the issue is whether the plaintiff performed its contractual obligation as per the agreement. The plaintiff's obligation was to pay the bills as issued by the defendant. They had no obligation to inform the defendant what tariff should be assigned to them. **PW.1** testified in his evidence that the monthly bills were being paid as were presented by the defendant's officials after they had read the meter at the plaintiff's factory. This was confirmed by **DW.1** during cross-examination when he conceded that procedurally after reading and inspecting meter monthly to ascertain the usage for billing purposes they issue bills to the customer [**see page 11 of the typed proceedings**]. As it could be reflected in the pleadings and evidence on record parties are not disputing about unpaid bills as submitted by the defendant's counsel in his submissions but the undercharge of the account which was allegedly discovered by the defendant for a period covering September, 2004 and July, 2008.

The defendant and its counsel have not led evidence to controvert the assertion that the plaintiff was paying its electricity bills as was presented to it by the defendant. If at all there was none payment of any bill it was orchestrated by the defendant itself because, as **PW.1** rightly stated it was not the plaintiff that prepared the bills, and neither did it read meters but it paid monthly according to what was being presented to it by the defendant. This answers the first issue in the affirmative. That is to say the plaintiff observed well its obligation to pay all electricity bills as presented to it by the defendant.

The second issue is **whether the wrong tariff assigned by the defendant was occasioned by any act of the plaintiff**

From the evidence of the parties, particularly DW1 and PW1 it appears that before a customer can be connected and supplied with electricity service he must make a declaration through special forms on his load of the usage. It was the testimony of **PW.1** that the forms were filled though on cross examination, he stated that he did not remember as to what he filled in regard to the load.

DW.1 on the other hand said that among the information to be declared by the client is the actual load or expected usage of the electricity so that the accounts section can be informed on which tariff that client could be charged. Explaining further, he said that there are two tariff, that of tariff two for high usage and tariff three for normal usage. In the former the customers are highly charged where as in the latter the charges are lower.

Regarding the procedure followed before a customer could be assigned a tariff it is the evidence of **DW.1** that normally the customer would be required to declare in a special form his load of usage of the electricity during the application. The defendant company is supposed to inspect the premises or plant before connecting it to the services. From this piece of evidence it goes without saying that before connecting a new customer, the services provide must be satisfied that the customer qualifies for the services he applied for.

Apart from what would rather seems as a technical or expert testimony of the **DW.1**, there is nothing concrete in nature of evidence to point to the guilty of the plaintiff in concealing its actual load in the said application forms

as the defendant asserted in its defence and in the final submissions by the counsel. Even the letter dated **February 19th, 2009** on additional charges for the plaintiff's account did not give an explanation as to what led to the wrong charging or undercharging of the tariffs of the plaintiff and after such a long period of time. The defendant did not produce the audit report on which it based its demand of the additional charges neither did it bothered to tender as evidence before this court the said application form wherein it said that the plaintiff concealed its load in its plant.

I am inclined to believe that if at all there was concealment of any fact regarding usage and the load that could have been discovered either at the first inspection which is conducted before one can be connected, or during the routine inspections carried out by the defendant's officials. The problems were not discovered until after the internal auditors' query. The defendant's evidence falls short of anything substantial to point to any guilty on the part of the plaintiff in concealing its actual usage of the electricity.

Therefore, the second issue is answered in the negative.

2.The third issue is whether the defendant is justified to claim for any undercharged amount.

This issue will not detain me much. It has been substantially answered by the second issue above. This court has found nothing so far to prove that the plaintiff was responsible in any way to what led to wrong tariff assignment and undercharging of its meter account. As stated earlier, the application form on which the plaintiff is alleged to have had misled the defendant as to correct tariff chargeable has not been produced in evidence. The defendant concedes that it is required to make routine inspections on the use and tariffs of its customers. If anything the defendants' officials are to be blamed for they were supposed to discover any fault in tariff allocation or electricity charging earlier than they did. There is glaring negligence on the part of the defendant committed either at the time of connecting the plaintiff to the services or during the routine check-ups. This negligence is conceded by **DW.1** who said in cross-examination that there was a mechanism of regular checking but its "efficiency is another issue" indicating that the routine checking mechanism's efficiency was

questionable [**Refer page 15 of the typed proceedings**]. There is a long cherished maxim in law which states that ***no one can benefit from his own wrong doing.***

The defendant by claiming the undercharged amount is not only unjustified but also devising a way to seek to benefit from its own wrong. The third issue is therefore answered in the negative

3.What reliefs are the parties entitled to.

The plaintiff prayer was for a declaration that it has dully paid for electricity consumption for the period of **September 2004 to July 2008**. In my view, that amounts to stating the obvious, and I accordingly declare that the plaintiff has dully paid its bills covering the period of September, 2004 to July, 2008. Accordingly the defendants are permanently and perpetually restrained from claiming from the plaintiff Tshs.95, 023,753.08 as undercharged amount for the said period of September, 2004 to July, 2008 in respect of account number **11.03.57101.**

The rest of the prayers except the costs for this suit are rejected. The plaintiff has not been able to show how it suffered general damages and how in the circumstances of this case they could be entitled to the interest.

In this case, apart from a mere demand for the undercharged amount, the defendant has not occasioned any economic harm to the plaintiff. It cannot therefore be heard justly claiming under the head of interests and general damages.

In summary therefore judgment is entered for the plaintiff to the extent explained above.


A.R. MRUMA

JUDGE


Date: 13/6/2011



14/6/2011

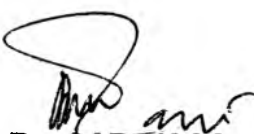
Coram: Hon. A.R.Mruma, Judge.

For the Plaintiff: Mrs Chihoma for the

For the Defendant: Ms. Batilda Mally for the Defendant.

CC: J. Grison.

COURT: Judgment delivered this 14th day of June 2011 in presence of Mrs Chihoma Counsel for the plaintiff and Mrs Batilda Mally Counsel for the Defendant.



A.R. MRUMA

JUDGE

Date: 14/6/2011

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