

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

CIVIL CASE NO. 70 OF 2015

- 1. UJENZI SOLVING CO. LTD.....1ST PLAINTIFF**
2. MARTIN KESSY.....2ND PLAINTIFF

Versus

- 1. DAR ES SALAAM WATER AND SEWAGE
CORPORATION.....1ST DEFENDANT**
**2. DAR ES SALAAM WATER AND SEWAGE
AUTHORITY.....2ND DEFENDANT**

RULING

B.R. MUTUNGI, J:

The plaintiffs herein through the legal services of Apex Attorneys Advocates have sued the defendants on a cause of action arising out of breach of contract entered into for supplying water to the 2nd plaintiff. In response to the claims, the 1st defendant through the legal services of Crax Law

Partners has raised a preliminary objection containing two legal points that:-

- 1. This Honourable court is not vested with jurisdiction to adjudicate the matter.*
- 2. The plaintiffs have no cause of action against the 1st defendant.*

The objection so raised was agreed upon to be disposed of by way of written submissions. The court record shows both parties have filed their written submissions in support or against the said points of law timely.

Regarding the first limb of the objection, the 1st defendant in its written submission submitted that, under section 4 of the Energy and Water Utilities Regulatory Authority Act, Cap. 414 Revised Edition 31st July, 2006 (hereunder shall be referred as the Act) there is an established body known as Energy and Water Utilities Regulatory Authority (EWURA). The 1st defendant submitted

further that, one of EWURA's function is to protect the interests of the consumers in the related sector and to facilitate the resolution of complaints and disputes as per section 6 (b) and 7 (1) (e) of the Act. The 1st defendant's counsel was of the view that, the alleged complaint was supposed first to be referred to EWURA as per section 34 (1) and (2) of the Act and not otherwise. The plaintiffs claim is rooted and connected to the major cause of action which is 'water supply'.

The 1st defendant went further by arguing under section 35 (1) of the Act which has to be read together with Rule 20 of GN. No. 3 of 2013 of the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2012 (hereunder shall be referred as the Rules) empowers EWURA to deal with complaints as the like in the instant matter. He further submitted that an aggrieved party by EWURA's decision has the right to appeal to the

Fair Competition Tribunal within 21 days from the date of the decision as per sections 35 (2), 36 (2) and 36 (5) of the Act and Rule 22 of the Rules.

The Counsel for the 1st defendant insisted the plaintiffs were supposed to comply with the law by filing the suit in the appropriate forum. He referred the court to the case of **Tanganyika Investment Oil & Transport Company Limited Versus Tanzania Revenue Authority, Miscellaneous Civil Application No. 262 of 2003 (High Court of Tanzania at Dar es Salaam Registry) (Unreported)** to support the said position. The 1st defendant prayed the suit be dismissed with costs for want of jurisdiction.

In reply, basically the plaintiffs in their written submissions pointed out that, they are seeking for reliefs against the defendants in a cause of action which among other things led to the loss of machines, the Scania truck, building materials and destructions. There was also an

element of defamation, as the defendants had published the plaintiffs herein water thieves. The plaintiffs further argued the cause of action in the instant suit is not covered within the ambit of the Act and Rules as alleged by the 1st defendant. The plaintiffs' claims are far beyond the complaints covered under section 34 (1) and (2) of the Energy and Water Utilities Regulatory Authority Act, Cap. 414 Revised Edition and its Rules found in GN. No. 10 of 2013. For a complaint to be lodged in EWURA it must be in respect of supply, possible supply or purported supply of regulated services, nothing more or nothing less.

The plaintiffs raised yet another issue that, the amount claimed by the plaintiffs is beyond the pecuniary jurisdiction of any other subordinate court stipulated in the Magistrates' Court Act [Cap. 11 R.E 2002]. Not only that, the plaintiffs have raised claims against the defendants which can only

be resolved in the High Court of Tanzania, this includes defamatory words published by the defendants.

As regards the cause of action against the defendants, it was submitted that, it would call for evidence hence cannot suffice to be termed a preliminary objection in line with the principle laid down in the case of **Mukisa Biscuits Manufacturing Co. Ltd Versus West End Distributors Ltd [1969] EALR at page 698.**

The plaintiffs concluded by stating that, this honourable court is clothed with jurisdiction to determine the dispute at hand.

The 1st defendant's rejoined by reiterating on what had been submitted in the submission in chief.

The issue is whether the first limb has merits or otherwise.

I have gone through the court record and discovered, the plaintiffs' cause of action is centered on the breach of

water supply as correctly stated by the 1st defendant. However, the plaintiffs go further by alleging the said breach has led among other things to the loss of machines, Scania trucks, building materials, and loss of profit. The same is observed in paragraphs 4 and 5 of the plaint.

From the outset, I totally agree with the 1st defendant's position, since it would appear the alleged cause of action (breach of contract in water supply) has led to the above stated consequential damages. The law is well settled in the dispute resolution of the complaints of this nature.

Section 4 of the Act establishes the EWURA whose duties are as per **section 7 (1) (e) of the Act** is to facilitate the complaints and disputes by the consumers. Further, I am also certain that, EWURA's among other duties is to protect the interest of the consumer as far as **section 6 (b) of the Act** is concerned.

As if not enough, what amounts to a complaint is also well settled. **Section 34 (1) of the Act** states as follows;

*'This section shall apply to **any complaint against the supplier of regulated goods or services in relation to any matter connected with the supply, possible supply or purported supply of the goods or services.**'* [Emphasis is mine]

In the instant suit, the plaintiff's cause of action is for the alleged breach of the water supply contract which is said to have been caused by the defendants. I am of the settled view, that even the alleged damages which the plaintiffs allege to have suffered, are directly connected with the alleged breach.

Thus, I find the matter at hand is filed in an appropriate or improper forum, rather it ought to have been referred to EWURA and not herein. I am further of the view that EWURA upon determining the complaint under **section 35 (1) (a)-(j) of the Act** read together with **Rule 20 (a)-(i) of the Rules**

would then be empowered to award reliefs against the guilty party (supplier) depending on the circumstances of a particular dispute. The foregoing implies the EWURA scheme has room for remedies such as compensation and other diverse remedies.

In the case of **THE ATTORNEY GENERAL AND ANOTHER VERSUS NASSORO ATHUMAN GOGO AND OTHERS, CONSOLIDATED CIVIL APPEALS NO. 105 AND 81 OF 2006 (CAT-DSM) (UNREPORTED)** at page 12 the Court of Appeal of Tanzania held;

'It occurs to us that, where the provisions of a statute are plain and unambiguous, there is no need to resort to the rules of construction.'

In light of the above authority, since the wording of the above cited sections and Rules are plain and unambiguous, I thus find it inappropriate to resort to the rules of construction as suggested by the plaintiffs. The plaintiffs are

supposed to comply with the law by instituting the complaint in the proper forum. Having read through the EWURA ACT, I find it does not provide for any limitation on pecuniary jurisdiction on any matter or dispute which is referred to EWURA or an amount to be referred to the High Court.

From the above stated reasons, I find the court has no jurisdiction to entertain the matter at hand. It follows then, the court having no jurisdiction, entertaining the second limb will only be subjecting the court to an academic exercise. Consequently, I hereby struck out the suit for want of jurisdiction with costs.

It is so ordered.


B.R. MUTUNGI

JUDGE

19/4/2018

Right of Appeal Explained.


B.R. MUTUNGI

JUDGE

19/4/2018

Read this day of 19/4/2018 in the presence of Mr. Mohamed Muya for the plaintiffs and Mr. Hamza Jabir for the defendants.


B.R. MUTUNGI

JUDGE

19/4/2018