

THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

APPLICATION NUMBER EWURA /33/1/2

BETWEEN

RAVJI CONSTRUCTION LIMITED APPLICANT

VERSUS

TANZANIA ELECTRIC COMPANY LIMITED RESPONDENT

RULING

(Made by the Board of Directors of EWURA at its 49th Ordinary Meeting held at Dar es Salaam on the 13th May 2011)

On 17th November 2009 the Applicant lodged an application to EWURA praying for the Orders as follows:

- (a) that the Authority (EWURA) be pleased to enlarge time for the Applicant to apply to restore the Complaint dismissed for want of prosecution;
- (b) that the Authority be pleased to set aside the dismissal Order dated 25th June 2009 and restore the Complaint; and
- (c) any other Order/relief the Authority may deem fit to grant.

The application was made pursuant to section 14 of the Law of Limitation Act, Cap. 89 and sections 16 (1) and 35 (j) of the EWURA Act, Cap. 414 and it was supported by an affidavit sworn by Mr. Marion A. Nkwera, the Administrator and Principal Officer of the Applicant. The Respondent objected the application and it filed the counter-affidavit sworn by Mr. Godson Makia, the Principal Officer of the Respondent. When

the matter came for hearing on 22nd October 2010, it was agreed that the same be argued by way of written submissions and both parties have submitted their submissions and we are very thankful for their submissions.

Before going to the merits of the application, we find it necessary to satisfy ourselves on the legality of the application before us. This application has been lodged following the decision by the EWURA Board dated 25th June 2009 which dismissed a complaint lodged by the Applicant for want of prosecution. The complaint was filed at EWURA pursuant to the provisions of Part VI of the EWURA Act, Cap. 414 and the provisions of the EWURA (Dispute Handling Procedure) Rules, GN No. 30/2008.

We have looked closely on the legality of the application in accordance with the applicable law and to start with, we have looked at the provisions of law the application has been made. Section 16 (1) and section 35 (j) of the EWURA Act, Cap. 414 which the application has been made from provide and we quote:

S. 16 (1): Subject to the provisions of this Act, the Authority shall have all powers to do all things which are necessary for or in connection with the performance of its functions or to enable it to discharge its duties".

S. 35 (j): The Authority may make order:

(a).....N/A

(b)..... N/A

(j) such other reliefs as may be deemed reasonable and necessary.

Looking closely at the provisions above, one will agree and it is our opinion that this application is incompetent due to:

First, the applicability of Section 16 (1) of the EWURA Act, Cap. 414 is subject to other provisions of the Act. This application started from the dismissal of the

complaint that was lodged to EWURA in accordance with the provisions of Part VI of the EWURA Act, Cap. 414. Likewise, Section 35 (j) of the EWURA Act, provides for the powers of the Authority to issue any other order as may be deemed reasonable and necessary. This Section refers to such orders the Authority may make in exercising the powers conferred to it under Part VI. The procedure provided for under Part VI of the EWURA Act and that of the EWURA (Dispute Handling Procedure) Rules GN No. 30/2008 does not provide for the power to EWURA to set aside its decisions. The only remedy available to the aggrieved person is to appeal to the Fair Competition Tribunal.

Secondly, the application has been preferred under the wrong or inapplicable provisions of the law. The Law of Limitation Act, Cap. 89 do not apply to complaints falling under the jurisdiction of EWURA, since the applicability of the Law of Limitation Act, is limited to courts of law and EWURA is not a court of law.

Based on the foregoing, we have decided to as we hereby do strike out the application with costs.

GIVEN UNDER SEAL of the Energy and Water Utilities Regulatory Authority (EWURA) in Dar es Salaam this 13th day of May 2011.



.....

Miriam Mahanyu
(Secretary to the Board)