THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CIVIL APPEAL NO. 3 OF 2021

(Originating from Civil Case No. 1 of 2018 of Masasi District Court at Masasi)

TANZANIA ELECTRIC SUPPLY Co. LTD .....APPELLANT

VERSUS

RUTH F. TUNZO .....RESPONDENT

JUDGEMENT

9/06/2022 &27/10/2022

LALTAIKA, J:

The appellant herein **TANZANIA ELECTRIC SUPPLY CO. LTD** is dissatisfied with the decision of the District Court of Masasi at Masasi in Civil Case No. 1 of 2018 adjudged in favour of the Respondent. The appellant has fronted a total of five grounds of appeal as reproduced hereunder;

1. *That [the Hon. Resident Magistrate] erred in law and in fact in entertaining the matter without having the proper jurisdiction to do so.*

The matter originates from a regulated service and hence there is a proper forum to entertain it.

2. *That [the Hon. Resident Magistrate] erred in law and in fact in inserting and determining issues which were not framed during the hearing of the case. He maliciously dropped the first and second issues framed and replaced with his own issues.*
3. *That the Honourable Resident Magistrate erred in law and in fact by conducting an improper assessment of evidence. He among other:*
    a. *Determined an issue of a burnt meter which was not framed during the hearing of the case.*
    b. *Disregarded the testimony of the Defendant's witness (DW1) who was involved from the beginning in switching off electricity from the pole and who conducted an investigation on the source of fire.*
    c. *Regarded the testimony of the Plaintiff's witness whose testimony was contradictory, hearsay and his documentary evidence was also disqualified during the proceeding, but the trial Magistrate still regarded both the testimony and the disqualified evidence when making Judgement.*
    d. *Failed to take into consideration the expert opinion given by the meter expert from the defendant's witness hence relying on the mere "thought"/guesses given out by the Plaintiff's witness.*
    e. *Failed to take into consideration the testimony of the Plaintiff who clearly said that her meter was not defective hence could not cause any fire.*
    f. *Disregarded the testimony of Defendant's witness (DW1) who attended the fire incidence on the day of the occurrence of fire and the next day conducted investigation.*
4. *That the Honourable Resident Magistrate erred in law and in fact by awarding special damages without any proper evidence to justify the claimed amount.*
5. *That the Honourable Resident Magistrate was wrong in awarding the general damages whilst the court had no jurisdiction to entertain the matter.*

When the appeal was called on for hearing on 9/6/2022, **Mr. Florence A. Kahatano,** learned Legal Officer of the appellant represented the appellant while the respondent appeared in person, unrepresented by counsel. The parties opted for written submissions. A schedule to that effect was agreed upon. I take this opportunity to convey my commendation to the parties for their seamless compliance to the court order.

The factual backdrop giving rise to this appeal is as follows: On 12th day of June 2016 at 16:00, an electric fire outbreak damaged the electric meter of the respondent's house, resulting in the production of an electric fire at the meter. The electric fire spread to other parts of the house, damaging the house and household items therein. The respondent alleged that the that the fire was caused by electric services offered by the appellant. She made several attempts to secure compensation for her burnt house and household items, amicably but her efforts proved futile. Consequently, she decided to file a suit [Civil Case No.1 of 2018] before the trial court and claimed specific damages of **TZS.86,000,000/=** and general damages of **TZS.100,000,000/=**

Having been convinced that the plaintiff (now respondent) had proved her case to the required standard, the district court ordered payment of TZS 70,000,000 as specific damages and TZS 50,000,000/= as general damages. The appellant is strongly dissatisfied as alluded to above. Upon a careful scrutiny of the submissions in line with the above grounds of appeal, I will confine myself to the first ground because I am convinced that the same can dispose of the entire appeal.

It is instructive to note that the appellant (commonly referred to by its well-known acronym, TANESCO) is a parastatal organization whose core functions are generation, transmission, and distribution of power (electricity) in the country. The respondent, on the other hand (then plaintiff) is a natural person, resident of Masasi district in Mtwara. She is a civil servant working with Masasi District Council's Department of Education.

Submitting on the first ground, the appellant argued that powers to entertain complaints and disputes that originate from electricity faults/accidents are vested to the **Energy and Water Utilities Authority (EWURA).** To be able to determine such complaints properly and effectively, the appellant averred, one needs some knowledge in the respective fields. Our Civil Courts, reasoned the appellant, do not have the personnel with the expertise needed to enable them to handle such matters properly and effectively.

The appellant referred this court to **section 4 of the Energy and Water Utilities Authority Act 2001** which establishes a body corporate known as the Energy and Water Utilities Regulatory Authority "EWURA" to deal with the complaints cited. The appellant further referred this court to Section 34 to 38 of the same Act which governs the procedure for handling the complaints.

The appellant emphasized that the procedures for lodging complaints is governed by the **Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedures) Rules, 2020.**

It was the appellants submission further that when there is a tribunal that has been established and vested with powers to entertain a particular complaint/dispute, civil courts should not entertain such disputes.

To buttress his argument, the appellant cited a previous decision of this court in **Tanganyika Oil Transport vs Tanzania Revenue Authority** Misc. Civ. App. No. 262 of 2006 (unreported) where Manento JK (as he then was) held that:

> *".... Where there is a special tribunal in place established to cater for any particular issue, civil courts should desist from such cases."*

The appellant insisted that by conferring powers of handling complaints and disputes that originate from electricity faults/accidents to EWURA though the EWURA Act, the law limited the court's jurisdiction in respect of the referred disputes. To support the contention, the appellant cited the Court of Appeal of Tanzania's case of **Salim O. Kabora Versus TANESCO LTD and Others** Civil Appeal No. 55 of 2021.

In response, the respondent contended that the learned trial magistrate and the court thereof possess the requisite jurisdiction to entertain the matter. She averred that the appellant had raised the same issue in the form of a preliminary objection, and it was overruled for lack of merit.

The Act of Parliament quoted by the appellant namely CAP 414, reasoned the respondent, does not in any way confer exclusive jurisdiction to EWURA on the complaints raised in the instant matter.

It is the respondent's submission further that she is alive to the fact that in instituting a matter before a court of law, one must take into cognizance jurisdiction of the court concerned be it territorial, pecuniary, or statutory jurisdiction. Nevertheless, the respondent contended, **The Constitution of the United Republic of Tanzania of 1977** particularly Article 107A(1) states clearly that:-

> *"The judiciary shall be the authority with final decision in dispensation of justice in the United Republic of Tanzania."*

The respondent is of a firm conviction that as per the Article of the Constitution cited above, it is clear and undisputed that the court she had taken her grievances to, is vested with power and final authority on dispensing justice.

Section 34 to 38 of the EWURA Act cited by the appellant purporting to stipulate procedures for handling the disputes by the said Authority, the respondent reasoned, cannot oust the jurisdiction of the court to try the suit. To support her argument, the respondent referred this court to the case of **Honorable Attorney General Vs Lohay Akonay** Civil Appeal No. 31 of 1994

Employing some statutory interpretation techniques, the respondent argued that the word "may" as used in the cited section enabled the respondent to opt to take her complaints either to EWURA or any other forum. She concluded that the ground lacked merit and prayed that the same is dismissed.

I have dispassionately considered submissions by both parties. As alluded to above, this ground on jurisdiction of the court can determine the appeal in its entirety. The importance of jurisdiction in the administration of justice cannot be over emphasized.

Jurisdiction, as is often stated, is the compass that sets parameters and leads to coordinated business in dispensation of justice. The Court of Appeal in **Fanuel Mantiri Ng'unda v. Herman M Ngunda**, Civil Appeal No. 8 of 1995, (unreported) stated as follows on jurisdiction:

> *"The jurisdiction of any court is basic; it goes to the very root of the authority of the court to adjudicate upon cases of different nature...the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.* ***It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case.****" (Emphasis mine)*

It does not take much thought to realize that, in the instant matter, the learned trial magistrate overlooked the above position of the law as propounded by the apex court. It is in record that counsel for the appellant argued the position of the law I am about to elaborate by putting a preliminary objection (PO), but the learned trial magistrate took it lightly, I would say. Had he conducted just some simple research on the current position of the law on the matter, he would have come to a different conclusion. I will not discuss his reasoning in overruling the PO to avoid an unnecessarily long judgement.

It is noteworthy at the outset that the matter at hand falls under **Consumer Protection Law.** Owing partly to Tanzania's *"ujamaa"* past, where major means of the economy were state owned, issues related to consumer protection were not accorded the weight they deserved. It is only recently that consumer protection related issues and competition law in general have started to occupy scholarly and policy discourses in our country. To this end, as a court of record, I see no harm, in taking a few minutes to cast my nets wide enough to elaborate a few issues with some considerable length. I will start with the meaning of a consumer and purpose of consumer protection law in the context of our contemporary social economic condition.

There is no, as of yet, a universally accepted definition of the word consumer. **The United Nations Guidelines for Consumer Protection (UNGCP) 1985** UNCTAD/DITC/CPLP/MISC/2016/1 (available online at file:///C:/Users/lalta/Downloads/ditccplpmisc2016d1_en.pdf) herein after the Guidelines, leaves that to member countries. The Guidelines at section 3 define a consumer as

> *"A natural person regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt different definitions to address specific domestic needs."*

It is clear from the above definition that member states must craft definitions that suit their own social-economic settings. Nevertheless, irrespective of variation in definitions, consumer protection laws worldwide share one thing in common; they consider the consumer as a weaker party in the consumerism equation.

The primary purpose of consumer protection law is to protect consumers against a) unsafe products (b) qualitatively deficient goods and services (c) fraudulent, misleading, or undesirable trading practices (d) insufficient information and (e) economic exploitation through lack of competition or excessive prices, among other "unfair trade practices." See generally Oppenheim, Chesterfield S., ***Unfair trade practices and consumer protection: Cases and comments*** (West Pub. Co; 4th edition 1983).

There are two main approaches to enforcement of consumer protection law and policy: **formal approach** (criminal prosecution, litigation, and administrative actions) and **informal approach** (consumer advocacy, appreciation awards, reproach, persuasion, awareness raising etc.). The main difference is that the formal approach is state-centered and expensive while the informal approach is consumer-centered and less expensive.

Credit is often given to brave-spirited individuals who use the informal approach to safeguard the interests of consumers more like **the David versus Goliath** story. Quoting from various sources, the **Supreme Court of India** in **C. Venkatachalam vs Ajitkumar C. Shah & Ors on 29 August, CIVIL APPEAL NO.868 OF 2003 (unreported)** articulately highlighted the story of one such activists **Ralph Nader** as an entry point to expound how consumer protection has developed since then to take a central stage in national and international platforms. The supreme court provides:

> *"Ralph Nader is an extraordinary example of total devotion to the cause. It is men like him who leave an imprint and make history. Consumer movements all over*

the world take great inspiration from Ralph Nader. Every year 15th March is observed as the World Consumer Rights Day. On that day in 1962 President John F. Kennedy of the United States called upon the United States Congress to accord its approval to the Consumer Bill of Rights. They are (i) right to choose (ii) right to information (iii) right to safety; and (iv) right to be heard. President Gerald R. Ford added one more right i.e., right to consumer education."

Historically courts of law (particularly in England and the USA) even in the absence of specific legislations to that effect, were in the forefront in using the formal approach to protect consumers. Liability in Tort was expanded to previously unimaginable levels to protect consumers. Apparently, the well-known English case of **Donoghue v. Stevenson** (1932) A.C. 562 comes to mind. I do not need to say anything about the Donoghue case because, if I attempt to do so, the nostalgic, hindsight memories of reading the case for the first time 21 years ago would lengthen this judgment beyond the intended confines. It is hard to imagine a lawyer who did not enjoy lectures on **Donoghue** in their undergrads, unless they have a very bad taste to literary exposition combined with high level legal reasoning.

Courts in the USA also played a major role in shaping the position of consumers in the business and industrial development of the 19th century. See the 19th century American case of **Donald C. MacPherson v. Buick Motor Company** 217 N.Y. 382, 11 N.E. 1050 where the New York Court of Appeal ordered a car manufacturer to compensate a consumer who had been injured when one of the car wheels collapsed because of defect.

In the 1980's, consumer protection issues took a central stage in the UN agenda. Vide **Resolution 39/248 of 16 April 1985** the General

Assembly of the United Nations adopted the **United Nations Guidelines for Consumer Protection (supra)**. The Secretary General of the UN was authorized to persuade member countries to adopt these guidelines through policy changes or law. Consequently, some countries such as India enacted specific legislation for consumer protection **The Consumer Protection Act, 1986.** The Supreme Court of India in **C. Venkatachalam vs Ajitkumar C. Shah & Ors (Supra)** showers praises to the Act as under:

> *The Consumer Protection Act, 1986 is one of the **benevolent social legislations** intended to protect the large body of consumers from exploitation. **The Act has come as a panacea for consumers all over the country** and is considered as one of the most important legislations enacted for the benefit of the consumers. The Consumer Protection Act, 1986 provides inexpensive and prompt remedy..." (*Emphasis mine)

Tanzania, on her part, took a slightly different route. It chose not to enact a specific consumer protection legislation like the "benevolent social legislation" of India. Understandably, the 1980's were not easy times for the country that was trying to embrace competition and market-oriented policies after a long time of state-controlled economy. The following historical backdrop quoted from Laltaika, E. **"Legal and Institutional Aspects of Fair Competition in Tanzania"** Open University Law Journal, 2014, Vol. 5, No. 1:58-68 is instructive:

> *"Since attainment of independence from the British in 1961 until early 1990's, Tanzania's economy had been largely state controlled. ...Pursuant to the spirit of Ujamaa policy and tenets of the Arusha Declaration, the country enacted the **Price Regulations Act of 1973** to, among other things, fix prices for all major services and commodities in the country and keep check on*

> *monopolies. However, like other state-controlled economies, Tanzania's economy deteriorated prompting major reforms in the late 1980's. Among the reforms undertaken was to repeal the Price Regulations Act of 1973 in 1989...**The Fair-Trade Practices Act was enacted in 1994** borrowing concepts and provisions from the competition laws of Australia, Jamaica, Kenya and Canada. Owing partly to...changing international economic landscape the government of Tanzania began a process that would lead into a new Competition Law in the country. In 2003, **Tanzania enacted the Fair Competition Act to replace the Fair-Trade Practices Act... It is a two-tier law providing for both competition issues and consumer protection."***
> *(Emphasis mine)*

A lesson that can be gleaned from the above historical backdrop is that in the 1970's and 1980's, **under the Price Regulations Act of 1973** the focus of the law was almost exclusively on consumer protection without any competition issues addressed. There was no competitor to the government. The mode of enforcement, likewise, was formal mainly through criminal law. See for example the case of **Mashauri Ndoshi v. Republic** [1981] TLR 109 (HCT at Mwanza) (Katiti J.) and **Republic v. Mabula Mihambo** [1984] 89 (HCT at Mwanza) (Katiti J.) as helpfully (and articulately) digested in Fauz Twaib & Daudi P. Kinywafu ***Criminal Law in Tanzania: A Case Digest*** (Juris Publishers: 2019) p. 675.

Apparently, the policy tone changed slightly in the 1990's from "criminalization" to "cooperation" on enactment of **The Fair-Trade Practices Act (supra)** in 1994. However, the *Ujamaa* 'hangover' was still too conspicuous such that the law had to be repealed for inability to cope with the then fast paced social-economic transformation. The current law

namely **The Fair Competition Act (supra)** is an epitome of a paradigm shift in Tanzania's quest to embrace economic liberalization.

As alluded to above, the Fair Competition Act is a two-tier law catering for both consumer protection and competition law. Since we have covered at some considerable detail the concept of consumer, consumer protection and enforcement of consumer protection law, I find it imperative, albeit briefly, to expound on the meaning and nature of competition law. Only then can one have a clear picture of what is meant by a two-tier law.

Competition law can be described in simple terms as that branch of economic law that regulates the conduct of business entities as they relate to the market, consumers and among themselves. The word competition, as used here is an economic term of art. That is to say, it is a specialized jargon. **The Fair Competition** Act (supra) defines competition as

> *"The process where two or more persons: Supply or attempt to supply the same or substitutable goods or services to the persons in the same relevant geographical market, or Acquire or attempt to acquire the same or substitutable goods or services from the persons in the same relevant geographical market."*

Competition law should not be confused with the Economic Tort of Unfair Competition or passing off. These are different areas of law built upon different principles. The legal reasoning underlying the two areas of law is also vastly different. As a matter of fact, competition law ***strictu sensu*** (that is *in strict sense*, meaning separate from consumer protection law) is only indirectly concerned with an individual. Its main preoccupation is prohibition of monopolies, mergers, acquisition, and other restrictive trade practices. It

is not about individuals (natural persons) but rather how business entities interact. The European Union Competition law uses the word "undertaking" and not person.

The current Competition Law originates in the USA's post-Civil War period. This time witnessed growth of large industries and commercial entities. There also developed a tendency of large business entities to buy smaller competitors to drive them out of business. This led to public outcry for a legislation to prevent accumulation of great economic power in the hands of a few.

The US Congress responded to this outcry by enacting the famous **Sherman Anti-Trust Act in 1890** (Sherman Act), [*Act of July 2, 1890; Enrolled Acts and Resolutions of Congress, 1789-1992; General Records of the United States Government; Record Group 11; National Archives.*] This Act prohibits "every contract, combination or conspiracy in restraint of trade." It also prohibit "the monopolization of trade and commerce." The word monopolization was defined by the **US Supreme Court in *United States v. E.I. du Pont de Nemours & Co.*** (U.S. Sup. Ct. 1956) as

> *"The willful acquisition or maintenance of monopoly power in a relevant market as opposed to growth as a consequence of superior product, business acumen or historical accident"*

Needless to say, that the USA's Competition Law has influenced the rest of the world's attempts to regulate business entities. The Sherman Act has been adopted in a number of countries such as Canada, Ireland, Italy, and Sweden. The EU Competition Law is also based on the Sherman Act. In the

case of **TIMES PACAYUNE Co. v. US** (1953) the Supreme Court summarized the rationale for faith in competition's positive effect thus:

> *"Basic faith that a free economy best promotes the public will is that goods must stand the cold test of competition; that the public, acting through the market's personal judgement, shall allocate the nation's resources and thus direct the course its economic development will take"*

The Tanzania's Competition Act described above is said to be a two-tier law because it deals with bot consumer protection issues and competition law *strictu sensu.* It can also be added that the Act is a framework legislation in the sense that issues of competition law (broadly defined to include consumer protection) fall under the sector specific regulatory authorities: The Energy, Water Utilities Regulatory Authority (EWURA) handles complaints in that sector. The Tanzania Communication Regulatory Authority (TCRA) is empowered to deal with competition issues falling under the communication sector.

The Land Transport Regulatory Authority (LATRA) and the Tanzania Civil Aviation Authority (TCAA) likewise, have legal mandate to deal with their sector-specific competition law issues. With some mundane exceptions considered beyond the purview of this analysis, **appeals from the sector specific authorities go to the Fair Competition Tribunal FCT** which is established by the Fair Competition Act (supra) where they are supposed to be *finally* determined.

Some countries, notably South Africa, have separate regimes for consumer protection and competition matters. The National Consumer Commission (NCC) established by **section 85 of the Consumer Protection**

Act No.68 of 2008 (The CPA) is responsible for consumer affairs while the Competition Commission established in terms of section 19(1) of the **Competition Commission Act No 89 of 1998** deals exclusively with competition issues *strictu sensu.*

It is instructive to note that while philosophical underpinnings underlying competition law/antitrust/antimonopoly laws are fairly new, consumer protection practices are as old as humanity. During barter trade, communities in all cultures developed elaborate systems of protecting consumers against *intentional* deceptiveness. **The Weights and Measures Act CAP 340 R.E. 2002** of Tanzania is based on this traditional approach to consumer protection.

The Act protects not only a consumer buying a kilogram of meat in the local butcher to ensure she gets the right amount of meat she paid for, but also a farmer against selling his crops at an exploitative price against authorized unit of measure. The practice is known locally as **"rumbesa"** (packaging overflowingly). See also Guideline 32 of the UN Guidelines for Consumer Protection (Supra)

On the contentious issue in the instant matter as depicted in the quoted ground of appeal, it is noteworthy that countries or rather jurisdictions with a two-tier competition law regime and those that administer consumer protection issues separately from other competition law matters have one thing in common: they establish tribunals to deal with these issues at a deeper level than that expected of a civil court. The Energy and Water Utilities

Regulatory Authority "EWURA" described by counsel for the appellant is one of such quasi-judicial bodies.

The Supreme Court of India in **C. Venkatachalam vs Ajitkumar C. Shah & Ors. (supra)** articulated the rationale for such arrangements in the context of Consumer Protection thus:

> *"The Consumer Protection Act, 1986 was enacted with the object and intention of* ***speedy disposal of consumer disputes at a reasonable cost, which is otherwise not possible in ordinary judicial/court system.*** *48. In the book on Administrative Law, its distinguished author M.P. Jain has brought about the distinction between the Court and the Tribunal. According to him Courts are bound by prescribed rules of procedures and evidence and their proceedings are conducted in public. The lawyers are entitled to appear before them and the judge in the open Court hears the case and decides it by giving reasons for a judgment. The courts are totally independent of the executive will, whereas, the Tribunals are not ordinarily governed by the provisions of Code of Civil Procedure and the Evidence Act, except to the extent it is indicative in the Act itself. There is also a significant difference between the Court and the Tribunal with regard to the appointment of Members. The* ***object of the constitution of a Tribunal is to provide speedy justice in a simple manner*** *and the Tribunal should easily be accessible to all"* (Emphasis mine)

Unlike ordinary courts, specialized tribunals are not overtly bound by formalities in say admissibility of evidence. This is an important ingredient for efficient and speedy day to day operation. Needless to say, that unless specifically provided, tribunals are also not obliged to conduct their business openly. The Supreme Court of India goes on to expound on other advantages of specialized tribunals over regular courts in the context of consumer welfare thus:

> *"49. According to the celebrated book on Administrative Law' by Wade, the other object of constituting a* ***Tribunal is to create specialist Forum which would include specialists*** *in the field to adjudicate efficiently and speedily the matters requiring adjudication in that field and that commands the confidence of all concerned in the quality and reliability of the result of such adjudication."*
> (Emphasis mine)

There is no doubt that quasi-judicial tribunals established under sector specific laws alluded to above and even the Fair Competition Tribunal itself draw its members from a wide range of disciplines ranging from natural sciences to engineering. These individuals and the tribunal in question stand a better chance of articulating a consumer complaint in the breadth and depth required.

Essentially, the appellant's argument in defence of jurisdiction of the lower court may be divided into two. **One;** that the word "may" as used in the cited section enabled the respondent to opt to take her complaints either to EWURA or any other forum **Two;** that establishment of specialized tribunals does not ouster jurisdictions of the courts.

In addressing the above two points, I do not have to take an imaginary trip to the Supreme Court of India or the US Congress as it was the case in tracing the origin of the **Consumer Protection** Act of India (supra) and the epochal **Sherman Act** (supra) respectively. Our own topmost court in the land namely the Court of Appeal of Tanzania has dealt with the issue and proffered the much-needed wisdom to guide me in dealing with the issues at hand. I am inclined to expound on this position of the law as I hereby do.

The Court of Appeal case in question ***(Lila, JA; Korosso, JA; and Sehel JA,)*** cited by the appellant namely **Salim O. Kabora Versus TANESCO LTD and Others (supra)** (herein after **Salim O. Kabora)** handed down on the 7th day of October 2020 saves the day. It was an appeal from the ruling and order of the High Court of Tanzania at Dar es Salaam (**Muruke, J.)** in **Civil Case No 53** of 2013. Apparently, the trial court had ruled in favour of the respondents who had taken up a preliminary objection centered on jurisdiction of the court. The Court of Appeal upheld the position of the High Court.

A critical examination the crux of the matter in the present appeal may suggest that the case is distinguishable from the above decision of the court of appeal in the sense that while in **Salim O. Kabora (supra)** the dispute was centered on tariff debt, (unpaid electricity bill) the matter at hand is on loss of property which is tortious. To this end, I am alive to the position emanating from the decision of the Fair Competition Tribunal in **Tanzania Electric Supply Co. Ltd versus Ms. Elizabeth Kihunsi and another** Tribunal Appeal No 3 of 2013 **thus:**

> *"In our view, the scope of section 34 of the EWURA ACT read together with section 33(2) of the Electricity Act, Act No 10 of 2008 is wide enough to accommodate complaints based on damages as a result of negligence as in the instant case. Section 34(1) of EWURA Act is very clear in its wording that it shall apply to* ***any complaint*** *against a supplier of regulated goods or services in relation to any matter connected with* ***supply, possible supply or purported supply of goods or services****...However we must hurriedly say that our logical interpretation*

> *of the provisions of the law...is that the powers of the second respondent [EWURA] to entertain tortious matters in the discharge of its regulatory functions is...subject to sector legislation...EWURA has only power to entertain tortious matters arising out of the electricity sector in relation to negligent acts causing physical injury or damage/loss of property." (Emphasis is original).*

There is no doubt that **Salim O. Kabora (supra)** is applicable in a number of regulatory quagmires hitherto unresolved. My interest, however, is in the two issues raised by the appellant in the instant matter as alluded to above. On the first issue namely the use of "may" the apex Court had this to say

> *"It is implicitly clear that a dispute may arise between the supplier of electricity (licensee) and consumer of electricity (customer)...**such dispute of complaint should be referred to the Authority as established by the EWURA Act.** We are of the view, looking at how the provision is coached, that **the word "may" used under section 28(3) of the EA [Electricity Act] implies that it is optional to the consumer** whether or not to pursue the dispute or complaint. It does not create an option to the customer to choose the forum. That means in the event he is minded to pursue the complaint, the same has to be lodged with the Authority."*

Indeed, the legislator never intended to facilitate forum shopping. On the contrary, specialized tribunals are meant to save the consumer more efficiently as alluded to above.

The second issue is whether such tribunals have "ousted" jurisdiction of regular courts' as per Article 107A(1) of the Constitution. In **Salim O. Kabora (supra)** the Court of Appeal goes on to provide as follows:

> *"Much as we agree with the appellant that there is no express provision ousting the High Court's jurisdiction to entertain the dispute but, in view of the fact that there is a forum which is created by statute and which is mandated to provide adequate remedy to the parties, we have no hesitation to hold that, in the present case the High Court's jurisdiction is impliedly barred by the EA and EWURA Act."*

It does not take much thought to realize that in the matter at hand, the trial court (Masasi District Court, to be specific) clothed itself with jurisdiction it does not have; much to the detriment of the appellant, who should have taken her grievances through the proper channel described hereinabove. The voice of the highest Court in our jurisdiction speaking through the case of **Tanzania Revenue Authority vs Tango Transport Company Ltd** Civil Appeal No. 84 of 2009 (unreported) is loud and clear thus:

> *"Principally, objection to jurisdiction of the court is a threshold question that ought to be raised and taken up at the earliest opportunity, in order to serve time, costs and avoid an eventual nullity of the proceedings in the event the objection is sustained."*

Needless to say, that the above prophesy has come to pass in the instant matter as the appeal must fail. Time and money has been lost and the lower court's proceedings will soon be declared a nullity. However, before I do so, I wish to make some comments, albeit in passing on two issues. The first is on the "right to consumer education" as quoted in the Supreme Court of India's case of **C. Venkatachalam vs Ajitkumar C. Shah & Ors (Supra).** The right was later adopted by the **United Nations Guidelines**

for Consumer Protection (Supra). For ease of reference, Principle IV of the Guidelines provides:

> *"Businesses should, as appropriate, develop programmes and mechanisms to assist consumers to* ***develop the knowledge and skills*** *necessary to understand risks, including financial risks, to take informed decisions* ***and to access competent and professional advice and assistance,*** *preferably from an independent third party when needed."* (Emphasis added)

The voluntary but highly respected UN document goes on what should be covered by such education programs: "Relevant legislation, how to access dispute resolution mechanisms and obtain redress and agencies organizations for consumers." [Guideline 44(d)]

As we all know, the maxim "***ignorantia juris non excusant***" (ignorance of law is not an excuse) does not fit neatly within the legal framework governing consumer welfare. The reason is simple. To quote the 1948 winner of the Nobel prize for Economics and former professor at MIT **Samwelson, Paul Anthon** "The consumer, so it is said, is king...who uses his money as votes to get the things done that he wants done."

If indeed "mteja ni mfalme" as often avowed, the king deserves the requisite information to make informed choices. The UN Guidelines (supra) proposed use of mass media to reach a critical mass of consumers with the requisite information, knowledge, and skills. The respondent in this appeal kept on emphasizing that she didn't know that any other forum apart from court of law do exist let alone how to access them.

The second issue is legislation. The commendable efforts undertaken in the past three or so decades to improve the "ease of doing business" in the country should go hand in hand with building a robust legal and institutional framework for consumer protection. This requires purposeful legislation.

Whether that can be achieved by enacting a specific law on consumer protection (see the discussion on India and South Africa above) or dedicating an entire Article of the Constitution on rights of consumers (See for example **Article 46 of THE CONSTITUTION OF KENYA, 2010),** it is entirely upon relevant policy and/or legislative organs to decide. One thing is certain, consumers will always look up to independent government functionaries for help. The quest of business (whether private or state owned) to maximize profit should not adversely impact on the right of consumers to enjoy economic benefits of their countries. Innovative legislation to strike the right balance between consumer welfare and business growth should be continuous.

In the upshot, I allow the appeal. I hereby quash the proceedings of the lower court and all orders emanating from the same. I make no orders as to costs.

It is so ordered.

E.I. LALTAIKA

JUDGE
27.10.2022

COURT

This judgement is delivered today on this 27th day of October 2022 under my hand and the seal of this court in the presence of the respondent and absence of the appellant.

E.I. LALTAIKA

JUDGE
27.10.2022

COURT

The right to appeal to the Court of Appeal of Tanzania is fully explained.

E.I. LALTAIKA

JUDGE
27.10.2022