

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT ARUSHA

MISC. COMMERCIAL APPLICATION NO. 12 OF 2022

(ARISING FROM COMMERCIAL CASE NO. 13 OF 2021)

PANONE AND COMPANY LIMITED APPLICANT

VERSUS

MOGAS TANZANIA LIMITED 1ST RESPONDENT

MOGAS RWANDA LIMITED 2ND RESPONDENT

MOGAS CONGO SPRL 3RD RESPONDENT

MOGAS INTERNATIONAL DUBAI U.A. E 4TH RESPONDENT

MOGAS UGANDA LIMITED 5TH DEFENDANT

Date of Last Order: 30/05/2022

Date of Ruling: 01/06/2022

RULING

MAGOIGA. J.

This ruling is on preliminary objection on point of law to the effect that this court is not seized with jurisdiction to try this suit. The applicant instituted Commercial Case No.13 against the above respondents claiming for breach of transport contract of petroleum products by failure to pay consideration for petroleum transported to the tune of USD.218,827.94 and subsequently instituted the instant application against the same respondents praying for



furnish of security for production of property and in case of failure to order attachment before judgement for failure to furnish security.

Upon being served with both the plaint and application, the learned advocate for the 1st respondent filed WSD and counter affidavit and raised a preliminary objection, subject of this ruling in the application that this court is not seized with jurisdiction to entertain this application because, according to him, the said application is barred under the provision of 34 to 38 of the EWURA Act, 2003.

The applicant is advocated by Mr. Engelbert Boniface, learned advocate and the 1st respondent is advocated by Mr. Wilbert Masawe, learned advocate.

When the application was called on for hearing, Mr. Masawe prayed to adopt the written skeleton arguments in support of the preliminary objection. The basis of Mr. Masawe objection is that much as the transport was for petroleum products which is regulated by EWURA which has independent mechanism of dealing with complaints, under the UWURA Act, 2003, then, according to Mr. Masawe, this court is ousted with jurisdiction to entertain the suit and hence the application. Mr. Maswe cited the case of SALIM O. KABORA vs. TANESCO LTD AND WILLIAM MHANDO AMIR MAKUKA, CIVIL



APPEAL NO. 55 OF 2014 CAT (DSM) (UNREPORTED) which quoted the case of TANZANIA REVENUE AUTHORITY vs. TANGO TRNASPORT LTD, CIVIL APPELA NO. 84 OF 2009 CAT (ARUSHA) (UNREPORTED) to buttress his point.

On the strength of the above reasons, Mr.Masawe prayed that the objection be sustained, and the court proceed to dismiss the application with costs.

On the other part, Mr. Boniface orally objected the arguments by Mr. Masawe and submitted that the complaints handled by EWURA are limited only to regulated services and goods. According to Mr. Boniface, the dispute here is want of payment of consideration for goods and services rendered as per the contract of transport which is totally not within the regulated services and goods. According to Mr. Boniface, breach of contract is not envisaged to be regulated by EWURA and insisted that EWURA has no authority to determine breach of contract.

Mr. Boniface distinguished the cases referred for emanating from a different cause of action. On the above reasons, Mr. Bonifcae prayed that the instant objection be dismissed with costs.



In rejoinder, Mr. Masawe submitted that transport is one of the regulated activities by EWURA and mere presence of contract do not by itself bring the suit/application to the jurisdiction of this court. Mr. Masawe pointed out that even the case of Tanesco was for contract and was based on non payment of electrical bills.

Having carefully and dispassionately considered the rivaling arguments and read the pleadings and the relevant provisions of the EWURA Act, 2003 and the case law cited, with due respect to Mr. Masawe, I don't associate myself with his arguments for being far from convincing me otherwise. I will try to explain. One, contract for transportation of regulated goods and services is not among the regulated services by EWURA. Two, as rightly argued by Mr. Boniface, and rightly so in my own view, the cases cited by Mr. Masawe are distinguishable from the case here. The issue that was before the case of SALIM O. KABORA (supra) was disconnection of electricity in the appellant's pharmaceutical business on allegation of fabricated tariff debt which the appellant was not ready to pay which are within the regulated services of EWURA whereas here the dispute is breach of contract for failure to pay the transport costs which is not a regulated service b EWURA. More so the case of TRA Vs. Tango Transport Limited (supra) the issue here was tax liability

not within the normal courts' jurisdiction. Hence, basically I have no problem with the holdings in these two cases relied but are distinguishable as noted above. Three, at any strength of imagination and in my considered opinion, transportation and breach of contract is not one of the regulated services of the EWURA as defined under section 3 of the UWERA Act, 2003 as amended. Four, section 34 of the EWURA Act, 2003 upon which this objection is pegged, is very clear EWURA will deal with **any complaint against a supplier of regulated goods or services in relation to any matter-connected with supply, possible supply or purported supply of the goods and services** (emphasis mine) that the dispute subject of EWURA authority must related to supply of regulated goods and service and not otherwise.

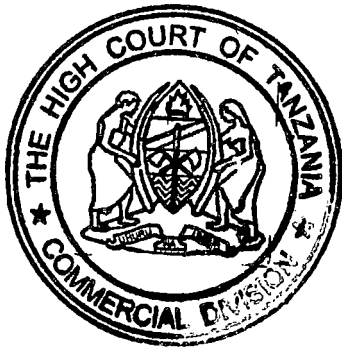
Five, the interpretation by Mr. Masawe that the plaintiff is a supplier of the regulated goods and services is not backed up by the pleadings, and as such, the question asked and answered by him in his submissions that she is the supplier is misconceived and misleading. The plaintiff shall and will remain a transporter and not supplier and not covered by EWURA as submitted.



On the foregoing reasons, I find the preliminary objection misconceived, devoid of merits in the circumstances we have and same must be and is hereby dismissed with costs.

It is so ordered.

Dated at Arusha this 1st day of June, 2022.



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S.M. MAGOIGA

JUDGE

01/06/2022