

**IN THE FAIR COMPETITION TRIBUNAL  
AT DAR ES SALAAM**

**TRIBUNAL APPLICATION NO. 6 OF 2015**

**SUMATRA CONSUMER CONSULTATIVE COUNCIL  
(SUMATRA CCC).....APPLICANT**

**VERSUS**

**SURFACE AND MARINE TRANSPORT REGULATORY  
AUTHORITY (SUMATRA).....RESPONDENT**

**RULING**

Sumatra Consumer Consultative Council filed an application on March, 2015, for intercity bus fare review down wards following change of prices in the World Market. In Tanzania, local market, pump price dropped from Tanzanian Shs. 2,178 to 1,650 at the time of the application for review.

By virtue of section 18(5) of the SUMATRA Act, Act No. 9 of 2001, respondent conducted an inquiry in Mwanza, Kigoma and Dar es Salaam respectively. Sumatra Board of Directors upon being satisfied issued an order No. SMTRA/02/2015, effective 1<sup>st</sup> May, 2015 on the new bus fare. It is worth noting that the order was

issued following receipt of an application seeking for downward review of intercity bus fares.

On 29<sup>th</sup> April, 2015 and before lapse of 14<sup>th</sup> days for which respondent order would have been effective, the respondent received two applications for review of new fares. The application was from Afri Trans Limited and ABC General Supplies Co. Ltd. Afri Trans Limited application was for review of fare in accordance with Tariff Regulations of 2009, while ABC General Suppliers Co. Ltd was for review of the new bus fares in accordance with respondent order dated 15<sup>th</sup> April, 2015.

Following receipt of the two applications, respondent informed the public that her order dated 15<sup>th</sup> April, 2015 would not be implemented pending application for review. Part of the Notice written in Kiswahili is reproduced hereunder:

...Mamlaka ya Uthibiti Usafiri wa Nchi Kavu na Majini (SUMATRA) imepokea kutoka kwa Msafirishaji ABC Trans na Afri Trans Limited maombi ya kupitia upya maamuzi yake ya kushusha viwango vya nauli za mabasi ya masafa marefu yaliyotolewa kwa agizo namba SMTRA/02/2015 la tarehe 15 Aprili, 2015 kwa mujibu wa kifungu Na. 19(2)(b) cha Kanuni za Tozo za mwaka 2009.

“Kufuatia maombi hayo, SAMATRA inatoa taarifa kwa Umma kuwa utekelezaji wa viwango vipya vya nauli kama ilivyoelekezwa katika agizo Na. SMTRA/02 unasitishwa hadi

hapo marejeo yaliyoombwa yatakapokamilika. Kwa sasa viwango vya nauli vya zamani vitaendelea kutumika hadi hapo umma utakapotaarifiwa vinginevyo”.

The above notice is what prompted the applicant to file application before this Tribunal, seeking for the following orders:

- (a) That the Honourable Tribunal may be pleased to order the respondent to implement its order No. SMTRA/02/2015 issued on 15<sup>th</sup> day of April, 2015.
- (b) An order of the Tribunal to the respondent to permanently observe regulatory processes while discharging and after discharging its regulatory duties.
- (c) Costs of the application.

Application is supported by affidavit of Oscar Ishengoma Kikoyo secretary of the Sumatra Consumer Consultative Council, sworn on 15<sup>th</sup> July, 2015 in support of the application. The respondent upon being served filed counter affidavit sworn by Lila Mtulia sworn on 15<sup>th</sup> August, 2015. The affidavit in support of the application relevant part read as follows:

- (5) That on 9<sup>th</sup> March, 2015 the applicant filed an application for bus fare review downwards ranging from 12 per cent to 25 percent after fuel on market had dropped and

so local market where pump price dropped from Tanzanian Shillings 2,178 to Tanzanian Shillings 1,652 and reduction of import duty of passenger vehicles from 25 percent to 10 percent from July, 2014. Annexed herewith as annexure SCCC-1 is the application filed to the respondent which I crave leave of the Honourable Tribunal to form part of this affidavit.

(6) That the respondent organized three inquiry meetings in Mwanza, Kigoma and Dar es Salaam on 9<sup>th</sup>, 12<sup>th</sup> and 18<sup>th</sup> of March, 2015 respectively where the applicant was given an opportunity to present and defend its application as required by the law. Annexed herewith as Annexure SCCC-2 is a letter from the respondent for the inquiry meetings which I crave of Honourable Tribunal to form part of this affidavit.

(9) That on the 15<sup>th</sup> day of April, 2015 the respondent issued its order, on the said application herein entitled ORDER NO. SMTRA/02/2015 whereby fare by intercity buses were slashed at different rates according to their categories, fare for lower ordinary buses was reduced from 36.89 to 34.00 per passenger per kilometer. Fares for upper ordinary buses was set at Tshs. 44.96 per passenger per kilometer, fares for ordinary buses was set at Tshs. 44.96 per passenger per kilometer. Fares for semi luxury buses were reduced from Tshs. 53.22 to 50.13 per passenger per

kilometer. Annexed herewith as annexure SCCC-3 is an order of the respondent. ORDER NO. SMTRA/02/2015 issued on the 15<sup>th</sup> April, 2015 which I crave leave of the Honourable Tribunal to form part of this affidavit.

(12) That on 29<sup>th</sup> April, 2015, the applicant was shocked to learn that the Management had rescinded implementation of the said order of the Board on reason that she had received the application for review of its own order from ABC Trans and Afri Trans, the reasons which bear no weight whatsoever. Annexed herewith as Annexure SCCC-4 is letter rescinding ORDER NO. SMTRA/02/2015 dated the 29<sup>th</sup> April, 2015 which I crave leave of the Honourable Tribunal to form part of this affidavit.

(13) That, by intent and purpose the Management of SUMATRA on its mandate has no power to rescind the order issued by the Board of Directors of SUMATRA.

The respondent filed counter affidavit and raised relevant following issues:

(6) That, the contents of paragraph 7, 8, 9 and 10 are noted, however with regard to the contents of paragraph 10 the respondent avers that events took place that deterred the implementation of the said order.

(7) That the contents of paragraph 11 are disputed. Respondent reiterates the contents of paragraph 7 above and state further that, since the provisions of SUMATRA (Tariff) Regulations, 2009 gives mandate to the Authority to accept application for review from any party affected by the Order issued in a prescribed time, the respondent received applications for review which had to be addressed. Annexed herewith as annexure "SMTRA-1" is the applications for review received on 29<sup>th</sup> April, 2015 which I crave leave of the Honourable Tribunal to form part of this Counter Affidavit.

**Further,** the respondent has been working to resolve a new dispute with TABOA on the application of new fares during this time and the matter was reported to FCC on 18<sup>th</sup> May, 2015. The respond is waiting for the said dispute to be resolved in order to proceed with the fare review. Annexed herewith as Annexure "SMTRA-2(1)" is the letter from the respondent to FCC dated 18<sup>th</sup> May, 2015 and "SMTRA-2(2)" a letter from FCC to the respondent dated 26<sup>th</sup> May, 2015 on the said matter.

(8) That, the contents of paragraph 12 of the applicant are denied. Respondent reiterates the contents of paragraph 8 above and state further that, the application for review from

ABC Trans and Afri Trans were considered as per the provisions of Surface and Marine Regulatory Authority (Tariff) Regulation, 2009 and not as a means of rescinding the Order, the applicant is put into strictly proof.

(9) That, the contents of paragraph 13 and 14 of the Affidavit are totally denied and is put to strict proof of the allegations. The respondent was required to address all the applications and disputes that arose from the introduction of new fares. The respondent had neither the intention nor authority whatsoever to rescind or halt such order made by the Board rather had to deal with the pending review. Annexed herewith as annexure "SMTRA-3" are Tariff Regulations. The applicant's submission intends to mislead this Honourable Tribunal on the respondent's efforts in the implementation of the order.

Applicant submission went along the affidavit in support of the application. In essence applicant submitted that management of SUMATRA has no powers to rescind the order issued by the Board of Directors of SUMATRA. Any aggrieved party is entitled to appeal to the Fair Competition Tribunal. So the order issued by SUMATRA to rescind the decision of the board is ultra vires and amounts to abuse of court process.

In essence, applicant submitted that, respondent contravenes the provisions of section 5(b) of the SUMATRA Act, Act No. 9 of 2001 which provides for duty of the Authority to protect the interests of consumers in the regulated sub-sector.

On the other hand, the respondent submitted that is empowered by the SUMATRA Act, Section 6(1) to regulate rates and charges. In determining rates and charges the respondent is guided by section 16 which provides for matters to be considered in determining rates and charges. In doing so, the respondent is further guided by the Surface and Marine Transport Regulatory Authority (Tariff) Regulations, 2009 in conducting review and determining rates, charges or fares. To the respondent, the order dated 29<sup>th</sup> April, 2015 was issued following application by Afri Trans Limited and ABC General Supplies Co. Ltd for review of reviewed (new) fares. The respondent further submitted that, application for review was correctly done under section 19(2) of the Surface and Marine Transport Regulation Authority (Tariff) Regulations, 2009.

It was the respondent's submissions that, where there is an appeal or review, execution of the order becomes impossible and therefore it has to stay pending decision on the applications. It is respondent's submission that, it was proper for the respondent to inform the public that the order SMTRA/02/2015 would not be



implemented until the decision of review is made. The respondent further insisted that Notice to the public aimed at informing the public about the receipt by the respondent of application for review and that implementation of the order SMTRA/02/2015 until such time application for review of reviewed rates are disposed.

We have carefully considered the affidavit evidence for and against the application together with the respective submissions and arguments by contending parties in this application. It is worth noting that the respondent as an Authority established by Act No. 9 of 2001 is mandated by section 6(1) of the above act to perform the following functions:

- (i) To issue, renew and cancel licenses;
- (ii) To establish standards for regulated goods and services;
- (iii) To establish standards for the terms and conditions of supply of regulated goods and services
- (iv) To regulate rates and charges as well as to make rules.

Moreover, the respondent has other functions of monitoring the performance of regulated sectors, in relation to:- levels of investment, availability, quality and standard of services, costs of services, the efficiency of production and distribution of services and other matters relevant to the Authority. The authority also

facilitates resolution of complains formerly of the Tanzania Central Freight Bureau set out in section A, 4A and 4B of the Tanzania Central Freight Bureau Act, namely disseminate information on matters relevant to the functions of the Authority, to consult with other regulatory authorities or bodies or institutions discharging functions similar to those of the Authority in Tanzania or elsewhere.

In the course of its functions, the respondent is empowered by section 6(1) to regulate rates and charges. In determining rates and charged the respondent bound to follow section 16 of the SUMATRA Act, Act No. 9 of 2001, that provides for matters to be considered in determining rate and charges. The respondent is also guided by Surface and Marine Transport Regulatory Authority (Tariff) Regulation, 2009 in conducting review and determining rates, charges or fares.

The respondent's power to review its decisions specifically related to tariff, rates and fares emanate from the Surface and Marine Transport Regulatory Authority (Tariff) Regulations 2009, on matters that no appeal or review has been preferred to the Fair Competition Tribunal.

For an aggrieved person who does not wish to exercise his right of appeal, or review to this Tribunal, may apply for review of

respondent's decision under regulation 19(2) of Surface and Marine Transport Regulatory Authority (Tariff) Regulations, 2009.

Regulation 19(2) read as follows:-

**Where no appeal has been preferred on the decision of Authority any part affected may within 14 days from the date of issuance of the decision apply to the Authority for review of the approved tariff provided for grounds for review shall indicate for:**

- (a) There is a mistake or error apparent on the face of records; or
- (b) There is a discovery of new and important matter or evidence which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the order was made.

From the above provisions, the scope of review against respondent's own decision is limited. Reviews are meant to stop perpetuating errors due to human failing, thus defeating justice. Such mistakes or errors must be corrected to prevent miscarriage of justice.

Respondent's order No. SMTRA/02/2015 on reviewed fares for intercity buses dated 15<sup>th</sup> April 2015, its effective date was to be 14 days after issuance of a public notice published in widely

circulated newspaper to wit 1<sup>st</sup> May, 2015. On 29<sup>th</sup> April, 2015 before elapse 14 days for which respondent's order would have been effective, the respondent received two applications for review, from Afri Trans Limited and ABC General Supplies Co. Ltd.

Afri Trans Limited application was for request for review of new fares and re submission as per annexure SMTR-1 to the respondent's counter affidavit. The application read in Kiswahili as follows:

**"Yah: Ombi la kupitia upya viwango vya nauli na kufanya marejesho tena".**

Likewise, ABC, and General Supply Co. Ltd application in terms of annexure SMTR-1 referred in the respondent's counter affidavit, was for review of the new bus fares in accordance with respondent's order No. SMTRA/02/2015. The title of the application reads:

**Yah: "Kutokubaliana na tozo mpya za nauli na kuomba marejeo ya nauli kufanyika tena".**

From the above words, it is obvious that, applicant ABC did not agree with new bus fare rate, and thus requesting for review.

As correctly submitted by the respondent the two applications filed by Afri Trans and ABC General Supply Co. Ltd amounted to review in terms of Regulation 19(2) of Surface and Marine

Transport Regulation Authority (Tariff) Regulation 2009. The two company exercised the rights as provided by the law. The respondent acted within their parameters. More so, the application was filed before the effective date of order no SMTRA/02/2015. There is nothing said by the applicant on the wide powers granted to the respondent by Regulation 19(2) of Surface and Marine Transport Regulation Authority (Tariff Regulations, 2009. Thus, respondent having received the application for review, same would have been rendered nugatory if Order No. SMTRA/02/2015 would have been effected.

To this Tribunal, the respondent correctly suspended the order pending review of the two applications. We wish to note that current pump price is Tshs. 1,977 for petrol and 1,823 for diesel for DSM city centre. Basing on transport costs; the price is more at up countries. eg. Kigoma. When order No. SMTRA/02/2015 was being issued, pump price was 1,652. Now pump price is 1,898 and 1,747 for petrol and diesel respectively, in accordance with EWURA Public Notice on Cap, prices for petroleum products effective 6<sup>th</sup> January, 2016, reference PPR/16-01/1. With these facts at hand, Tribunal cannot order, implementation of SUMATRA order No. SMTRA/02/2015 issued on the 15 day of April, 2015, because situation on the ground has changed. Applicant if so interest should file application before respondent to accommodate current status of the petroleum products prices

and other related factors. Having found that respondent had powers to hear the review, resission of the order No. SMTRA/02/2015 was justified. In the circumstances, application is dismissed

Before winding up, we wish to state that with economic liberalization and the introduction f competition in the supply of goods and services, there is a need to ensure a level playing field, among the suppliers of goods and services. Appellant has an important role to play in protecting consumers of goods and services in Maritime and Road Transport services. Thus, regular consultation with respondent to determine review of fare following change of Tanzania and global economy is highly encouraged.

We have considered the circumstances in which this application emanates and important role applicant plays in the regulation regime. We have come into the conclusion that circumstances of this case, it is better if each party should bear its own costs.

Signed  
**Judge Z.G. Muruke – Chairman**

Signed  
**Dr. M.M.P. Bundara – Member**

Signed  
**Mrs. N.L. Tenga – Member**

Ruling delivered this 1<sup>st</sup> day of February, 2016 in the presence of Haraniel Elisante for the respondent and in the absence of the Applicant.

Signed

**Judge Z.G. Muruke – Chairman**

Signed

**Dr. M.M.P. Bundara – Member**

Signed

**Mrs. N.L. Tenga – Member**

**01/02/2016**