REGULATORY JUSTICE EFFICACY IN TANZANIA: A CASE OF THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

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Abstract

Economic regulation and competition are frameworks to ensure efficient functioning of markets for the benefit of the consumer through competitive prices and acceptable standards and quality of products service delivery. EWURA and its tribunal are among instruments used in providing regulatory justice in Tanzania. This paper evaluates delivery of regulatory justice as administered by EWURA with a view to establishing its efficacy, shortcomings and providing possible solutions. Findings and conclusions of the study have shown that the EWURA tribunal is relevant in discharging the spirit of the EWURA Act. It has also been found out that decisions made by the Tribunal conform to the EWURA Act and, that; generally, the performance of the EWURA tribunal is very good. The good performance notwithstanding it is recommended

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that the EWURA tribunal should expand its activities countrywide so as to reduce the time within which the complaints are completed by the tribunal.

Keywords: Competition, EWURA, Regulatory justice, Regulatory Authorities, Efficacy.

1. INTRODUCTION

In Tanzania as it is in many other jurisdictions, provision and administration of justice is predominantly the duty of the judiciary. The High Court, which was first established by article 17 (1) of the Tanganyika Order-in-Council of 1920; now derives its establishment from article 108 (1) of the Constitution.[1] Article 108 (2) of the same provides for its jurisdiction. Article 108(2) provides:

> If this Constitution or any other law does not expressly provide that any specified matter shall first be heard by a court specified for that purpose, then the High Court shall have jurisdiction to hear every matter of such type. Similarly, the High Court shall have jurisdiction to deal with any matter which, according to legal traditions obtaining in Tanzania, is ordinarily dealt with by a High Court; save that, the provisions of this sub-article shall apply without prejudice to the jurisdiction of the Court of Appeal of Tanzania as provided for in this Constitution or in any other law. (Emphasis supplied)

[1] Constitution of the United Republic of Tanzania, 1977, Cap. 2, [RE 2002].

In addition to the said original jurisdiction, the High Court of Tanzania has an appellate, extended, revisionary and supervisory jurisdiction over subordinate Courts[2].

Pursuant to article 117 of the Constitution appeals from the High Court are preferred to the Court of Appeal of Tanzania which is vested with powers, authority and jurisdiction of confirming, reversing or varying any decision made by the High Court.[3] Decisions of administrative/quasi-judicial tribunals are subject of judicial review powers of the High Court of Tanzania[4]. Invariably, appeals of administrative/quasi-judicial tribunals whose enabling legislations provide as such, lie to the Court of Appeal of Tanzania[5]. Based on the provisions above, the Judiciary, and particularly the High Court of Tanzania, has broad original jurisdiction that covers most of the sectors of the economy, including economic regulation if there are no laws that specify otherwise.

According to the Judiciary,[6] the High Court of Tanzania registered an increasing number of cases annually coupled with an unmatched disposal rate which has led to perpetual existence of pending cases in the High Court main registry and its District Registries. In particular, the low case disposal rate problem intensified from the mid 1980s, when Tanzania adopted market economy principles of economic management. That in turn saw the private sector grow precipitating more disputes and intense litigious culture in commercial related matters.[7]

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[2] S. 43 and 44 of the Magistrates' Courts Act, Cap. 11, [RE 2002].

[3] Constitution of the United Republic of Tanzania, above note 3.

[4] *James F Gwagilo v Attorney General* [1994] TLR 73.

[5] P. 9219 *Abdon Edward Rwegasirav The Judge Advocate General*.

[6] www.judiciary.go.tz/History . Site visited on the 5 March 2019.

[7] *ibid.*

According to the Judiciary,[8] commercial related disputes provided a special challenge that necessitated the High Court to embark on reforms so as to speed up disposal of cases. One of the results of the said reforms has been the introduction of specialized divisions of the High Court such as the Land, Labour, and Commercial divisions.

2. ECONOMIC AND LEGAL REFORMS IN THE DELIVERY OF REGULATORY JUSTICE

The wave of far reaching economic reforms that led to adoption of market economy principles of economic management caught up with the need to repeal the Regulation of Price Act, 1973. In 1993, during the debating of the Government Bill to repeal the said Act, and in view of the chaos in the market, Parliamentarians requested the Government to search for means and ways of overseeing the market economy.[9]

In answer to the request by Parliament, in less than a year, the Government came up with the Fair Trade Practices Act, 1994 (FTPA). The FTPA was crafted to take care of both competition and economic regulation issues. Its implementation was faced with many challenges most of which were inherent in its architectural design flaws.[10]

Following the observed flaws and hardships in the implementation of the FTPA, in year 2000, the Government engaged a needs assessment consultancy with regard to competition and economic

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[8] *ibid*.

[9] Mkocha, G., "East African Community (2004). Competition Policy. The State of Competition Policy in Tanzania", Paper Presented at a Seminar on Competition Law in East Africa, Arusha, date. p. 14.

[10] East African Community, above *note 12 at p. 8.*

regulation for the Tanzanian economy. The consultancy came up with policy statements one of which was that:

> Government policy is to allow competition to regulate the market. However, where competition is not available and natural monopoly characteristics exist, or the incumbent firm displays significant market dominance, is able to fix prices and extort monopoly rent to the detriment of the consumer, or where completely free market leads to excessive competition and market instability damaging consumer interest, Government policy is to introduce administrative regulation. Administrative regulation, however, will only be introduced where benefits out-weigh the costs of regulation.[11]

Following that policy statement, the Government presented various Bills which were passed into laws by Parliament, namely:

(i) The Fair Competition Act, 2003 (FCA).
(ii) The Energy and Water Utilities Regulatory Authority Act, 2001 .
(iii) The Surface and Marine Transport Regulatory Act, 2001 .
(iv) Tanzania Civil Aviation Regulatory Authority Act, 2003 (TCAA).
(v) The Tanzania Communications Regulatory Authority Act, 2003 .

[11] *ibid.*

The FCA was designated to provide for competition whereas the EWURA, SUMATRA, TCAA and TCRA Acts were to provide for economic regulation in the economy[12].

3. EWURA as a Tribunal of First Instance

Among the four economic regulation Acts, the EWURA Act is the subject of this paper because of the uniqueness it bears in that it is the only Act that established a completely new institution that had never existed in the country before. The created institution, i.e., EWURA, has been conferred with the mandate to regulate the Electricity, Petroleum, Natural Gas and Water and Sewerage sectors. The former three sectors have been jointly referred to as Energy. It should be noted that with passing of the Petroleum[13] Act, 2015 that pursuant to its section 11, established the Petroleum Upstream Regulatory Authority; EWURA only deal with midstream and downstream subsectors of petroleum and natural gas.

Petroleum, electricity, natural gas and water are crucial sectors that touch daily businesses of both households and enterprises in the economy. Hitherto, they attract players who transact in the variant relevant markets in the referred subsectors. In turn these inherent transactions do often precipitate into disputes that require to be settled timely, effectively and comprehensively in the interest of justice to the parties, the consumer society and the economy at large.

Conventional Courts are assumed to lack the required expertise to provide for the timely, effective and comprehensive regulatory justice. This necessitated establishment of this specialized

[12]S.96(1) and (3) of the Fair Competition Act No. 8 of 2003.
[13] Act No. 21 of 2015.

tribunal, i.e., the Energy and Water Utilities Regulatory Authority (EWURA) at first instance to deal with quasi judicial and administrative matters pertaining to the markets in these sectors. As a Tribunal, EWURA is guided by the Energy and Water Utilities Regulatory Authority Act[14] of 2001 and the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules[15], 2013.

Since the establishment of EWURA in 2006, there has not been a study to look into the efficacy of this body which deals with the regulation of the sectors at first instance with a view to establishing whether it is still relevant. Relevance of existence of EWURA revolves around whether matters it handles cannot effectively be handled by regular courts and whether the decisions made by EWURA have had the desired impact as per the spirit of the EWURA Act. These are the two issues that the paper endeavors to address.In particular, the paper seeks to provide clarity on the issues of relevance of EWURA as a tribunal of first instance for issues related to energy and water utilities regulation in Tanzania. The paper, firstly, examines the adequacy of the legal and regulatory framework for provision of regulatory justice under EWURA as compared to the spirit of the EWURA Act. Secondly, the paper looks at relevance and performance of EWURA as a tribunal of for instance for energy and water utilities regulation in Tanzania. Thirdly, the paper looks at the conformity of the decided cases at EWURA with the legal and regulatory framework under which EWURA operates.

[14] CAP 414 RE 2002.

[15] Government Notice No. 10 issued on the 25 January 2013.

4. RESEARCH MODEL FOR THE STUDY

Based on the review[16]of four models namely the Efficacy/productivity Model, Balance Score Card and the EFQM Models, Trial Court Performance Standards (TCPS) and the Dutch RechtspraaQ. Based on the reviewed models, the researcher developed an empirical model that shall was employed in assessing the "tribunal" responsible for dispensation regulatory justice at EWURA. Summary of the all the reviewed models and the resulting ideal research model for this study is as in Table 1 below.

Table 1: Summary of Indicators in the Ideal Research Model

	Efficacy/productivity Model	Quality Model			The Ideal Research Model	
		Balance Score Card and the EFQM Models	Trial Court Performance Standards (TCPS)	Dutch RechtspraaQ	Efficacy	Quality
Criteria/ Indicator	The caseload per judge	The financial area	Access to justice	Independence		Access to justice
	Cost per case	The working processes area	Expedition and timeliness	Impartiality	The working processes area	
	(Labour) productivity	The learning and growth area	Equality fairness and integrity	Timeliness of proceedings		
	The duration of proceedings	The customer area	Independence and accountability	Expertise of the judges	The duration of proceedings	Expertise of the judges
	Clearance rate		Public trust and confidence	Treatment of the parties at court sessions	Clearance rate	Public trust and confidence
	The budget of courts				The budget of the Tribunal	

[16] European Commission for the Efficiency of Justice (CEPEJ),,"Performance Indicators and Evaluation for Judges and Courts",available at www.coe.int/cepej, ,(accessed 29th January 2019 at 0900 hrs.

Working Processes

This aspect of the model aimed at reviewing the adequacy of legislation that governs the working of the Tribunal at EWURA focusing in particular to its coverage and the inbuilt easiness of compliance.

Duration of Proceedings

This variable taped the duration of a case, the probability of a disposition in a given time and the average unexpected delay between the actual and the announced date of a decision. Literature has shown that one of the main arguments for the excessive duration of trials has been cited as the lack of resources. In this study the duration was measured by the date the complaint started to the date the award was decided.

Clearance Rate

It is defined as the number of outgoing cases as a percentage of the incoming cases. It measures whether the tribunal is keeping up with their incoming caseload. If this is not the case, the backlog of cases will increase. This indicator was measured on annual basis based on the date for which each case started at the EWURA Tribunal.

Budget of the Tribunal

The study examined the adequacy and execution of the budgets allocated to the tribunal at EWURA. The analysis was based on the most cited shortfall on efficiency of tribunals and courts which has always found their blames in insufficient budget to run the same.

Access to Justice

The study focused on the easiness to which the tribunal is reached with ordinary members of the Public. The study also investigated on other conditions attached to access which can

potentially hamper accessibility; such factors included filing fees, threshold of the dispute some among others.

Expertise of the Judges

This aspect considered the knowledge and expertise of the decision makers at all levels in relation to the jurisdiction and the mandate given to EWURA by the establishing Act. Over and above the criteria set in Schedule One of Cap 414. A survey was conducted to the respondents and data collected was used in assessing their review of the expertise of the members of the EWURA Tribunal.

Public Trust and Confidence

This shall be measured by using a proxy of number of appeals that the decisions made by the tribunal at EWURA have attracted at the Fair Competition Tribunal (FCT) during the study period. A survey was conducted and data collected was used in assessing their review of the confidence on the EWURA Tribunal.

Consolidating the Model

Having detailed the indicators that would be useful in the study, it follows that there should be a consolidation to which the results of the analysis will be interpreted. According to Gramatikov[17], one effective way to attain the consolidation is to have an index. This is a composite measure which ranks the paths to justice under study and is based on more than one data item. The goal is to summarize several indicators into one final score. An index of the path to justice is a single value which reflects the different indicators of a path to justice[18].

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[17]Gramatikov M., *A Handbook for Measuring the Costs and Quality of Access to Justice*,Antwerpen: Maklu Publishers, 2016,, at pg 67.

[18]Gramatikoy,*A Handbook for Measuring the Costs and Quality of Access to Justice*, above note 21 at page 49.

Briefly, the construction of an index of a path to justice is about aggregating the chosen indicators into one composite measure. This means that first aggregate values of the costs, the quality of the procedure and the quality of the outcome have to be computed. Two models are possible: simple (the aggregation is a plain calculation of the mean of the related indicators) and complex (weights are applied before the means are computed). The latter option returns better results but has one stringent requirement – knowledge on the comparative preferences towards the chosen indicators. Thus, the latter option of weighted aggregation was found to be more feasible for this study.

Computing an Index of the Ideal Research Model

In developing the index[19], the researcher itemized the indicators and distinguished them based on the two broad categories of efficiency and quality. The broad categories were assigned weights totaling 100% to the effect that efficiency will bear 70% and quality will bear 30%. All the indicators were assigned equal weights as shown hereunder.

Efficacy Indicators	Score Range	Weighted Score	Total Score
The working processes area	0 to 100	0.7X	∑X/4*0.7
The duration of proceedings	0 to 100	0.7X	
Clearance rate	0 to 100	0.7X	
The budget of the Tribunal	0 to 100	0.7X	
Quality Indicators			

[19]Gramatikoy,*A Handbook for Measuring the Costs and Quality of Access to Justice*, above note 21 at page 50.

Access to justice	0 to 100	0.3X	∑X/3*0.3
Expertise of the members	0 to 100	0.3X	
Public trust and confidence	0 to 100	0.3X	
Overall Score of the EWURA Tribunal			∑X/4*0.7 + ∑X/3*0.3

The overall score was interpreted based on the following criteria as provided hereunder.

Overall Score (%)	Remarks
100 - 70	Excellent
69 - 60	Very Good
50-59	Good
40-49	Average
35-39	Below Average
0-34	Poor

5. METHODOLOGY DEPLOYED

This being a descriptive research, the researcher collected primary data through his own observation, direct communication with respondents by way of key informant interview, questionnaire administration and observations. A sample of 30 respondents

(lawyers) was drawn from a list of parties who have attended cases at the EWURA Tribunal. Attendance register for the attendees was the sampling frame for the exercise.

The researcher held in-depth discussions with seven (7) individuals who were selected because of their presumed knowledge about particular topics and issues within the energy and water utilities framework. The inquiries were organized around a set of questions that were designed to engage the informants in offering information and their opinions.

6. EWURA AS A TRIBUNAL OF FIRST INSTANCE FOR ENERGY AND WATER UTILITIES REGULATION IN TANZANIA

Based on research conducted by the author of this paper results show that most (92.4 %) respondents were of the view that the EWURA Tribunal is very competent. None of the respondents was of the view that EWURA Tribunal was incompetent. Invariably, these responses were independent of subsectors from which the respondents were sampled implying that the ratings are common to all respondents irrespective of their subsectors in the study area.

Case records [20] that the researcher could lay hands on show that, during the period under review (up to end of 2016), the EWURA Tribunal had handled a total of 28 cases out of which only 4 cases were appealed against, at the Fair Competition Tribunal (FCT). This is an impressive 70 % success rate. It was further found that out of the 4 appeals, EWURA lost 2 and won 2 cases. This is a 50 % success rate which is again impressive given the small sample from which the statistic is obtained, due to limitations of data

[20] EWURA Case Register. Dar es es Salaam, 2017 at pp. 1 - 64.

availability. These findings do indeed corroborate the above findings that the tribunal is relevant and competent.

Most of the key informants interviewed on this matter were of the opinion that the Tribunal has proven to be competent and relevant for the cases it has handled and decisions made that have often been pro consumers. In particular, there have been many applications by the water and electricity providers seeking to hike tariffs that have either been turned down completely or granted at a reduced rate, thus, giving relief to the consumers downstream.

The success notwithstanding, most of the key informants were of the view that the central nature of the Tribunal, i.e., the fact that it operates from Dar es Salaam and recently from its Headquarters in Dodoma remains a bottleneck that EWURA needs to unlock for it to become even more competent and relevant. This is so notwithstanding the fact that EWURA has other branches in Arusha for Northern zone and Mwanza for the Lake zone. The tribunal does not sit at the zonal offices.

7. ADEQUACY OF THE EWURA LEGAL AND REGULATORY FRAMEWORK FOR PROVISION OF REGULATORY JUSTICE

As earlier asserted, in its function as a Tribunal, EWURA is guided by the Energy and Water Utilities Regulatory Authority Act of 2001 and the Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2013.

According to the survey carried out by the researcher regarding this aspect of the law, results show that most (69%) of the respondents were of the view that the two legislation mentioned above were adequate in discharging the spirit of the principal

legislation i.e. the EWURA Act. Findings show that there were insignificant responses that the two-legislation mentioned above were inadequate. Responses on the adequacy of the legislation were independent of the subsector from which the respondents were sought. This cross-tabulation results mean that irrespective of the subsector that EWURA regulates, from which the respondents were sought, the rating is the same showing that the legislation is adequate to all the sectors regulated by EWURA.

Furthermore, key informant interviews have revealed that most of the basic tenets for dispensation of justice required by any legislation such as right to be heard, impartiality of the decision makers and right to appeal have been built into the legislation thus contributing to its high ratings by the respondents.

Despite the impressive ratings discussed above, there are issues that need to be looked at critically so as to improve upon the legislation. Key informants have revealed that parties to complaints lodged at EWURA do not access the Board of Directors which is the ultimate decision-making organ in making their case. The Division or the Unit (responsible for the subsector) does hear the parties and submit their analysis to the Board for decision making. This omission may be construed as lack of fair hearing as the decision maker did not directly listen to the parties and yet decides on their fate. Given the pecuniary interests that may come to play based on the nature of transactions in dispute before the EWURA tribunal, there is need to introduce this aspect sooner than later in the interest of justice.

Section 16 (1) of the EWURA Act provides that the Authority shall have power 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. Much as these wide powers can be used to

assist the functioning of the EWURA tribunal, issues such as interim relief and/or interlocutory orders which are currently implied in both the reviewed legislation require express provision so as to avoid an impression that the wide powers are injudiciously invoked by the Authority. These issues may be considered during development of the law either through review of the law or the rules as the Authority shall deem fit and appropriate.

8. CONFORMITY OF THE EWURA DECISIONS WITH THE LEGAL AND REGULATORY FRAMEWORK UNDER WHICH EWURA OPERATES

8.1 An Overview of the EWURA Decided Appeal Cases

During the period under review, the Tribunal at EWURA had handled a total of 28 cases to completion as seen in the attached Appendix 2. The distribution of cases based on the sub sectors is electricity; 24 cases (86 %), water; 2 cases (7%) and petroleum; 2 cases (7%).

With regards to appeals against these decisions, out of the 28 cases, only 4 cases were appealed against at the Fair Competition Tribunal pursuant to Section 29 of the EWURA Act for which EWURA lost 2 cases and won 2 cases. *In the case Dar es Salaam Water and Sewerage Authority (DAWASA) Versus Energy and Water Utilities Regulatory Authority (EWURA*)[21] ; the appellant was contending EWURA's decision order No. 08-001 dated 8April 2008. Grounds of appeal which formed the issues for FCT to determine were that the Respondent (EWURA) erred in law and in fact by disallowing the Appellant's application for a Tariff Increase for water supply and sewerage services. The other ground was

[21] *Dar es Salaam Water and Sewerage Authority (DAWASA) vs Energy and Water Utilities Regulatory Authority (EWURA)*, Appeal No.1 of 2008.

that the Respondent erred in law and in fact by not correctly taking into account the terms of the Lease Agreement signed on the 12 December 2005 between the appellant as the Lessor and Dar es Salaam Water and Sewerage Authority Corporation (DAWASCO) as the operator which provides a mechanism for the periodic adjustment of water and sewerage tariffs.

Upon closure of submissions, it was the Judge reasoning that EWURA as the Regulator is empowered under Section 16 (1) and 18 (1) of the EWURA Act[22]and Article 66 of the Lease Agreement to supervise the Appellant and the Operator and require the Appellant to supply information, produce any document or give any evidence that may assist the Respondent in performance of its functions.

Under Section 16 (1) of the EWURA Act[23], the Respondent has wide powers to do all things which are necessary for or in connection with performance of its functions or to enable it to discharge its duties. In the view of the Judge, the Respondent was justified in issuing the orders/direction against the Appellant. It was further asserted that the Appellant appeared to be treating EWURA as a party to the Lease Agreement between DAWASA and DAWASCO which is a total misconception as the provisions of the Lease Agreement are not binding on EWURA.

It was held that in the premises, EWURA having indisputably followed the required procedure including conducting a public inquiry before reaching its decision, we are satisfied that save for the finding about the projected surplus of DAWASCO's budget for 2007/2008 its decision was well founded thus the appeal has no

[22] *ibid*
[23] *ibid*

merit and is hereby dismissed with costs. Sheikh, J (as she hen was) sitting together with members Jonathan Njau and Lusugga Kironde.

In the case of *BP Tanzania Limited (Appellant) Vs Energy and Water Utilities Regulatory Authority (Respondent),* the appeal emanated from the decision of EWURA in Appeal No. 2 of 2010 dated 25th January 2010 in which the Respondent ordered the closure of the Appellants' Moshi depot and slapped a fine of Tanzanian Shillings 10,000,000 on the Appellant for breach of provision of Energy and Water Utilities Regulatory Authority (Petroleum Products Sampling and Testing) Rules, 2008.

Grounds advanced by the Appellant were that the Respondent erred in law by failing to comply with the procedure laid down by the Petroleum Rules[24]. The second ground was that the Respondent acted ultra vires in ordering the closure of Moshi depot. In the alterative and without prejudice to the foregoing, ground three was that the Respondent erred in law and in fact by failing to comply with the principle of natural justice by failing to accord the Appellant with the right to be heard before reaching the decision of closing down the Moshi depot. In the alterative and without prejudice to the foregoing, the Respondent erred in law by failing to conduct an inquiry before ordering closure of the Moshi depot for twelve months.

Upon closure of submissions, it was concluded that EWURA could have lawfully imposed a Tanzanian Shillings 10,000,000 fine if a second offence (repeated) was proved which not the case.

[24] Energy and Water Utilities Regulatory Authority (Petroleum Products Sampling and Testing) Rules, 2008.

Furthermore, even if the second offence had been proven, still the Respondent could not have closed the Moshi depot as the offence is not listed from among those provided in the First Schedule of the Petroleum Rules[25]. Invariably the Appellant was not made aware of his right to have a re test of the sample before closure of the Moshi depot and an inquiry was also not conducted as per requirement of Section 19 (2) of the EWURA Act[26]. It was held that in the premise we find the decision ordering payment of the penalty Tanzanian Shillings 10,000,000 and the closure of the Moshi depot was unlawful due to non-compliance with the Petroleum Rules[27]. The appeal is hereby allowed with costs and the decision to close the Moshi depot and payment of Tanzanian Shillings 10,000,000 is hereby quashed. Sheikh, J (as she then was) sitting together with members Felix Kibodya and Lusugga Kironde.

It is worth noting that the findings and holding in this case are in *parimateria* with that in the case of *Oryx Oil Company Limited Vs EWURA Appeal No. 1 of 2010* before the FCT. The case was an appeal emanating from the decision of EWURA in dated 25 January 2010.

These decisions are a reflection of the operation of the ground for which the EWURA tribunal should focus its attention. It is observed that much as there is a framework that provide for most legal requirement but its implementation may be wanting thus requiring scrutiny so as tighten the loopholes for occasioning of injustice. One such area would be allowing for appearance of the

[25] *ibid.*
[26] *ibid.*
[27] *ibid.*

parties before the Board and making their case so as to avoid the same issues repeating themselves in future.

8.2 Conformity of the EWURA Decision

The results regarding the conformity of EWURA decisions on cases with the regulatory framework that it operates under are that most (73 %) of the respondents were of the view that the decisions were very conformant. It was also found out that 6.8 % considered that the decisions were highly conformant whereas 5.1 % were of the view that the decisions were conformant. The study findings further show that those who considered the decisions to be non-conformant were 11.8%.

The cross-tabulation results show that respondents' perception on EWURA decisions' conformity with its legal and regulatory framework provisions were independent of subsectors from which they were sought implying that responses regardless of the subsector the respondents had similar pattern perception on the decisions of the EWURA Tribunal.

Responses from most of the key informants were that, there is generally a very good level of conformity of the decisions to provisions of the guiding law as interpreted and applied by the EWURA Tribunal. These findings are consistent with the record of the Tribunal that, out of the 28 cases reviewed in this paper only 4 cases were appealed against equivalent to 14.2 % of all the cases. This record indirectly translates to a success rate of 85.8 % in so far as sound and acceptable decisions (not appealed against) are concerned, without prejudice to the appealed decisions.

Furthermore, it is also observed that, at the Fair Competition Tribunal, where the four appeals were lodged, EWURA won two and lost two which gives it a success rate of 50 %. Although from a small sample, the success rate is nevertheless encouraging thus enriching the overall finding that the EWURA Tribunal does make decisions that conform to the provisions of the governing legislation. Notwithstanding these encouraging results, there is need for the regulations to pave way for parties to appear directly before the Board as is the case for the Kenyan Regulations.[28] This may reduce the chances of having the staff to sustain the thinking of officials who were on ground during the execution of activities that may be the bone of contention, as was the cases of BP Tanzania Limited and Oryx Tanzania Limited v. EWURA.

9. THE OVERALL EFFICACY PERFORMANCE OF EWURA TRIBUNAL

In developing an index, the researcher itemized the indicators and distinguished the same based on the two broad categories of efficiency and quality. The broad categories were assigned weights totaling 100% to the effect that efficiency bear 70% and quality bear 30%. All the indicators were assigned equal weights as shown hereunder.

Efficacy Indicators	**Score Range**	**Weighted Score**	**Total Score**
The working processes area	0 to 100	0.7X	∑X/4*0.7
The duration of proceedings	0 to 100	0.7X	
Clearance rate	0 to 100	0.7X	
The budget of the Tribunal	0 to 100	0.7X	

[28]The Energy (Complaints and Disputes Resolution) Regulations of Kenya, 2012.

Quality Indicators			
Access to justice	0 to 100	0.3X	∑X/3*0.3
Expertise of the members	0 to 100	0.3X	
Public trust and confidence	0 to 100	0.3X	
Overall Score of the EWURA Tribunal			**∑X/4*0.7 + ∑X/3*0.3**

The overall score is interpreted based on the following criteria.

Overall Score (%)	**Remarks**
100 - 70	Excellent
69 - 60	Very Good
50-59	Good
40-49	Average
35-39	Below Average
0-34	Poor