

FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

APPEAL NO. 4 OF 2012

VIOLET CHRISTOPHER NDIZI.....APPELLANT

VERSUS

MIC TANZANIA LTD (TIGO).....1ST RESPONDENT

TANZANIA COMMUNICATIONS REGULATORY

AUTHORITY (TCRA).....2ND RESPONDENT

Date: 21/02/2014

Coram: Hon. R.H. Sheikh, J/Chairman
Mr. Gregory Ndanu, Member
Mr. Onesmo Kyauke, Member – Absent
with apology

Appellant: Violet Christopher Ndizi – Absent

For the Appellant: Represented by her husband,
Christopher Ndizi
Kikondo Law Chambers – Absent

1st Respondent: MIC Tanzania Ltd – Absent but served

For the 1st Respondent: Absent but served with Notice.
Law Associates Advocate

2nd Respondent: TCRA – Absent but served with Notice

For the 2nd Respondent: Absent but served with Notice

Tribunal Clerk: Beda Kyanyari

RULING

This appeal arises from the decision of Tanzania Communications Regulatory Authority (TCRA) (2nd respondent) in Complaint No. 005 of 2012 made on 24/08/2012. On 31/10/2013 when this appeal was called for hearing Mr. Froldius Mutungi, learned advocate who was holding brief for Mr. Maulidi Kikondo learned counsel for the appellant, submitted that he was fully instructed to proceed and was ready to proceed with the hearing of the appeal.

Ms Yusufali of Law Associates, Advocates learned counsel for the 1st respondent immediately took objection to the appeal on the ground that the record of appeal had not been served upon either of the two respondents. She argued that as the appellant had failed to serve the respondents with the record of appeal the respondents were unable to know if it complies with the requirements of rule 11(3)(b) of the Fair Competition Tribunal (FCT) Rules 2012 as was ordered by this Tribunal on 4/12/2012. She urged that the appeal be dismissed with costs under the provisions of rule 31(1)(c) of the FCT Rules 2012.

Mr. Karungura learned counsel for the 2nd respondent who was assisted by Mr. Al-hassan Bwanga while in principle not opposing the hearing of the appeal, on his part, submitted that the pleadings were not complete as (a) a proper record of appeal had not been filed as ordered by this Tribunal on 4/12/2012 and (b) no reply to the memorandum of appeal had been filed by the 2nd respondent. He thereupon prayed firstly, for service of the record of appeal once it was filed by the appellant and secondly, for extension of time to file the 2nd respondent's reply to the memorandum of appeal.

In response to the arguments presented by the respondents' counsel, Mr. Mutungi submitted that the Tribunal's order made on 4/12/2012 for filing the record of appeal was duly complied with and that the respondents were duly served on 28/12/2012. While conceding that he could not provide proof of service of the record of appeal upon the respondents he urged this Tribunal to reject the prayer for dismissal of the appeal for failure by the 1st respondent to comply with rule 19(3) of the FCT Rules which requires a party/respondent intending to rely upon a preliminary objection to the hearing of the appeal or application, to file a notice of preliminary objection not less than 3 days before the hearing date. He, however, had no objection to the prayers made by counsel for the 2nd respondent for service of the record of appeal and extension of time to file the 2nd respondents' reply to the memorandum of appeal.

We have carefully considered the arguments submitted by the respective learned counsel. Rule 11 (3) (b) and (6) of the FCT Rules 2012 reads as follows:

11 (3) (b) An appeal shall be instituted by lodging with the Tribunal five copies of the record of appeal or cross-appeal for the use of the Tribunal and for each party in the appeal; and

(6) The record of appeal or cross-appeal shall contain pleadings, proceedings and the decision appealed against. (emphasize supplied)

Upon a close examination of the record we find that indeed while time was on 4/12/2012 extended up to 3/01/2013 for filing the record of appeal the record which was evidently filed on 28/12/2012 is not in compliance with rule 11(3)(b) and (6) of the FCT Rules, 2012 as was ordered by this Tribunal. This is because while the record of appeal which was lodged on 28/12/2012 contains copies of the proceedings and the decision appealed against the record filed as aforesaid does not contain the pleadings of the complaint appealed against.

Moreover from the arguments by learned counsel it seems clear that the record of appeal was not served upon either of the two respondents as required under rule 14 of the FCT Rules providing that service of copies of the memorandum and record of appeal be effected upon each respondent within seven days of lodging of

the memorandum and record of appeal. In the present case as the record of appeal was lodged on 28/12/2012 it ought to have been served upon each respondent by 4/01/2013.

We are satisfied therefore that as the appellant did not serve upon the respondents copies of the memorandum of record of appeal within the time stipulated under the rule aforesaid the appellant undisputedly failed to comply with rule 14 of the FCT Rules as well as this Tribunal's order made on 4/12/2012, which omissions warrant the rejection of the appeal under rule 31(1)(c) of the FCT Rules 2012.

The complaint by Mr. Mutungi that the 1st respondent's counsel has not complied with rule 19 (3) requiring a notice of preliminary objection to be filed not less than 3 days before the hearing is, in our view, not applicable in the instant case as the objection arose at the commencement of the hearing of the appeal in the Tribunal. Indeed even if we were to disregard the objection raised by Ms Yusufali it cannot be disputed that there is no proof of service of the record of appeal and therefore the appeal must be rejected for non-compliance with rules 14 of the FCT Rules as well as this Tribunals' order made on 4/12/2012.

In the event, the appeal being incompetent for the aforesaid reasons is hereby rejected under rule 31(1)(c) of the FCT Rules 2012 for non compliance by the appellant with rules 11(6) and 14

of the FCT Rules and the order of the Tribunal made on 4/12/2012 for lodging a record of appeal by 3/01/2013.

The appeal is accordingly hereby struck out with costs.

Signed

Hon. R. H. Sheikh, J/Chairman

Signed

Mr. Gregory Ndanu, Member

Signed

Mr. Onesmo Kyauke, Member

21/02/2014

Ruling read this 21/02/2014 in the presence of the above.

Signed

Hon. R. H. Sheikh, J/Chairman

Signed

Mr. Gregory Ndanu, Member

Signed

Mr. Onesmo Kyauke, Member

21/02/2014