

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

APPLICATION NO. 6 OF 2009

IRFAN M. DINANI..... APPLICANT

VERSUS

EMIRATES AIRLINES.....1ST RESPONDENT

AND

TANZANIA CIVIL AVIATION AUTHORITY.....2ND RESPONDENT

DATE: 14/12/2010

CORAM: Judge R. Sheikh - Chairman

Members: Dr. Bundara - Member
Prof. Kironde - Member

Applicant: Irfan M. Dinani – Present in person

For Applicant: In person

1st Respondent: Emirates Airline

For 1st Respondent: Mr. Fayaz Bhojani, assisted by Mr.
G. Ishengoma, Advocate.

2nd Respondent: Tanzania Civil Aviation Authority (TCAA)

For 2nd Respondent: Ms Maria Memba, Advocate

Tribunal Clerk: Beda Kyanyari

RULING

This is an application for extension of time for the applicant to file a notice of appeal and an appeal in respect of a decision of the Tanzania Civil Aviation Authority (2nd respondent) TC/01-09 made on 12/05/2009. The application is brought under rule 16(1) of the Fair Competition Tribunal (FCT) Rules, 2006 and is supported by the affidavit of Irfan Mohamed Dinani, the applicant.

The 1st respondent has resisted the application by counter-affidavit. By notice of preliminary objection Mr. Fayaz Bhojani of FB Attorneys, learned counsel for the 1st respondent, has taken objection to the application on the following ground:-

That the application is incompetent for not citing the enabling provision of the law.

In support of the ground of objection Mr. Bhojani submitted that the application is incompetent for non-citation of rule 23 of the FCT Rules which is the rule which empowers this tribunal to grant the extension of time sought by the applicant. He asserted that rule 16(1) cited by the applicant cannot move the

tribunal to grant the prayers sought in the amended chamber summons. Citing in his support the cases of (i) Naibu Katibu Mkuu (CCM) and Mohamed Ibrahim Versi, Court of Appeal of Tanzania (Zanzibar) Civil Application No. 3 of 2003 and (ii) China Henan International Cooperation Group V. Salvand Rwegasira, Court of Appeal of Tanzania (Dar es Salaam) Civil Reference No. 22 of 2005 (unreported) Mr. Bhojani urged this tribunal to strike out the application for being incompetent.

Ms Memba learned counsel for the 2nd respondent was clearly supportive of the preliminary objection raised by the 1st respondent and urged that the application being incompetent be struck out.

In response Mr. Dinani citing rule 28(2) of the FCT Rules submitted that this tribunal being a quasi judicial body is required to observe the principles of natural justice and to avoid formality and technicalities of rules of procedure found in court with a view to ensuring just, expeditious and economical disposal of proceedings. He asserted that the omission to cite rule 23 is curable since the rule allows the tribunal to extend time suo moto, and further submitted that the Court of Appeal

rules cited in the decisions relied on by the 1st respondent are inapplicable in this tribunal. Mr. Dinani urged this tribunal to avoid formality and technicalities of procedure and allow the application to proceed to hearing on merit. In the alternative he sought leave to amend the chamber summons by citing rule 23 so that the matter may be heard on merit.

As regards the decision of the Naibu Katibu Mkuu (CCM) case relied on by Mr. Bhojani, Mr. Dinani objected to it being considered on the ground that he was not given sufficient time to study it before the hearing in order to properly respond to it.

Upon careful consideration of the respective arguments by learned counsel we will say without further ado that we agree entirely with Mr. Bhojani that the application is incompetent for non-citation of rule 23 of the FCT Rules 2006 which is the rule which empowers this tribunal to grant the extension of time sought. As regards the complaint about not being given sufficient time to read the decision of the Court of Appeal of Tanzania in the Naibu Katibu Mkuu (CCM) case, we agree entirely with Mr. Bhojani that Rule 19(2) allows the production

of copies of unreported cases at the hearing. Mr. Dinani's objection is accordingly overruled.

As pointed out by Mr. Bhojani the Court of Appeal of Tanzania in the Naibu Katibu Mkuu (CCM) and China Henan International Cooperation Group cases clearly held that the non-citation of the law or citation of the wrong law renders an application incompetent. This tribunal has rules of procedure which it must follow in the administration of justice failure of which will render a mockery of the rules and defeat the purpose for which the rules were made. Indeed the role of rules of procedure in the administration of justice is fundamental. (See the China Henan International Cooperation Group case). Failure to cite the proper provision of the law granting power to this tribunal is not a mere technicality of procedure but goes to the root of the matter (see the decisions of the China Henan International and Naibu Katibu Mkuu (CCM)) cases. While under rule 28(2) this tribunal is required to avoid formality and technicality of rules of evidence as much as possible, rules of procedure are as stated above fundamental and cannot be disregarded as urged by Mr. Dinani. We reject the contention that the omission to cite the rule applicable is one that may be disregarded.

We also cannot agree with the contention that rules/decisions of the Court of Appeal of Tanzania are not applicable to this tribunal. In the case of *Jumuiya ya Wafanyakazi Tanzania v. Kiwanda cha Uchapishaji cha Taifa* (1988) T.L.R 146 the Court of Appeal held that all courts and tribunals are bound by the decisions of the court regardless of their correctness. It follows therefore that this tribunal is also bound by the decisions of the Court of Appeal of Tanzania. In the instant case we are in no doubt that the decisions in the *Naibu Katibu Mkuu (CCM)* and *China Henan International Cooperation Group* cases are binding to this tribunal.

The question of amendment does not arise since you cannot amend what is not properly before the tribunal.

In the event the preliminary objection is sustained and the application being incompetent is hereby struck out with costs.

Signed

Judge R.Sheikh – Chairman

Signed

Dr. Bundara – Member

Signed

Prof. Kironde – Member

14/12/2010

Ruling read this 14/12/2010 in the presence of the above.

Signed

Judge R.Sheikh – Chairman

Signed

Dr. Bundara – Member

Signed

Prof. Kironde – Member

14/12/2010