

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

TRIBUNAL APPLICATION NO. 9 OF 2008

IRFAN M. DINANI.....APPLICANT

VERSUS

ZANZIBAR TLECOM LIMITED.....RESPONDENT

0405/2010

Coram: Hon. R.H. Sheikh, J/Chairman

Prof. L. Kironde, Member

Dr. M. Malima, Member

Applicant: Irfan M. Dinani – Present in person

For the Applicant:

Respondent: Zanzibar Telecom Ltd

For the Respondent: Mr. Salum Toufiq

T/C: Beda Kyanyari

RULING

This is an application for extension of time for the applicant to file a Notice of Appeal from a decision of TCRA delivered on 21/11/2008. The application was filed on 31/12/2008 and is brought under Rule 16(1) of the FCT Rules 2006 and supported by the affidavit of Irfan Mohamed Dinani, the applicant.

According to his affidavit evidence he had to travel overseas in connection with his father's death, unaware of the procedure relating to Notice of appeal that he issued to TCRA a Notice of Appeal on 21/11/2008 which was delivered to TCRA on 24/11/2008. While in overseas he pursued the matter. On Saturday 27/12/2008 he returned to Tanzania. On 29/12/2008 upon contacting the Registrar of this Tribunal he was advised that he was required to file an application of extension of time to file a Notice of Appeal within 14 days from the date of the Ruling, hence this application.

The respondent Zanzibar Telecom Limited resisted this application. Mr. Salum Toufiq learned counsel for the respondent argued that the applicant is a registered advocate and having employed the services of an advocate at the hearing before TCRA, cannot plead ignorance in matters of compliance with the law for notice purposes.

During our deliberations after hearing the respective arguments by the parties it came to our notice that the applicant had not cited in his Chamber Summons rule 23 which is the provision in our Rules empowering this Tribunal to hear and determine the application and grant the extension sought. However in the spirit of rule 28(2) of the Rules which requires this Tribunal to observe principles of natural justice and avoid formality with a view to ensuring just, expeditious and economic handling of proceeding and more so sure that the respondent raised no objection, on a preliminary point of law, we will disregard this omission and proceed to consider the application on its merits.

From the applicant's affidavit evidence it is evident that the applicant immediately took steps to issue the Notice of appeal, even if the notice did not conform with the procedural requirements.

Indeed while overseas even though he was bereaved he did not sit idle, and he made reasonable efforts to pursue his intended appeal. The ruling sought to be appealed from was delivered on 21/11/2008 and the Notice to Appeal should have been filed by 5/12/2008 within 14 days of the decision sought to be appealed from. In spite of being away from the country up to 27/12/2008 the applicant filed this application for extension of time on 31/12/2008 that is 26 days after the decision and 4 days from the day of his return.

Upon careful consideration of the respective submissions we are satisfied that the applicant has advanced sufficient reasons for extending time.

In the event the application is granted with no order as to costs. The notice of appeal should be lodged by 11/05/2010.

Lastly as the intended appeal relates to a decision of the TCRA in the exercise of its quasi judicial powers it is our considered view that TCRA is a necessary party to the intended appeal and ought for this reason to be made a party to the appeal.

Accordingly the applicant is also ordered to join TCRA as a party/respondent to the Notice of Appeal and serve TCRA with a copy of the Notice of Appeal. TCRA is a legal person entitled to defend its acts and decisions.

It is so ordered.

Signed

Judge R. H. Sheikh – Chairman

Signed

Prof. J.M.L. Kironde – Member

Signed

Dr. M.M P. Bundara – Member

4/05/2010

Ruling read before both parties and Mr. Salum Toufiq learned counsel for the respondent and Beda T/C.

Signed

Judge R. H. Sheikh – Chairman

Signed

Prof. J.M.L. Kironde – Member

Signed

Dr. M.M P. Bundara – Member

4/05/2010