

SUBSIDIARY LEGISLATION

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THE FAIR COMPETITION ACT, 2003

No. 8 OF 2003

RULES

(Made under section 89)

**THE FAIR COMPETITION TRIBUNAL RULES, 2006
PART I**

- Citation* 1. These Rules may be cited as the Fair Competition Tribunal Rules, 2006.
- Interpretation* 2. In these Rules, unless the context requires otherwise-
“Act” means the Fair Competition Act, 2003;
“appellant” means a person who lodges an appeal before the Tribunal;
“applicant” means a person who files an application before the Tribunal;
“Chairman” means the Chairman of the Tribunal and includes the Chairman of the Tribunal as constituted for a particular proceeding;
“Commission: means the Fair Competition Commission established by the Act;
“Public Register” means the public register of the Tribunal as provided for under section 85(4) of the Act;

“Registrar” means the person appointed to be Registrar of the Tribunal under section 86 of the Act;

“Register: means the Register of the Tribunal;

“Registry” means the Registry of the Tribunal

“regulatory body” means the Energy and Water Utilities Regulatory Authority (EWURA), Tanzania Communications Regulatory Authority (TCRA), Surface and Marine Transport Regulatory Authority (SUMATRA) and Tanzania Civil Aviation Authority (TCAA) or any other regulatory body the decision of which is appealable to the Tribunal;

“Respondent” means a person against whom an appeal has been lodged or an application has been filed;

“Tribunal” means the Fair Competition Tribunal established by Act.

PART II

PROCEDURE FOR APPEALS AND APPLICATIONS

*Tribunal
address for
service*

3. The service of documents on the Tribunal shall be addressed to the Registrar.

Appearances

4.-(1) A party to any proceedings before the Tribunal may appear in person, by an advocate, legal representative or an authorized officer.

(2) A person not resident in the United Republic of Tanzania may appear by a duly authorized attorney.

Language

5. The language of the Tribunal shall be English or Kiswahili, but all judgments, orders or decisions of the Tribunal shall be in English.

*Time of payment
of fees*

6. The fees payable on lodging or filing any document shall be paid at the time when such document is lodged or filed.

*Commencement
of appeal*

7.-(1) Any person who wishes to appeal to the Tribunal shall lodge a written notice in ten copies.

- (2) Subject to these Rules, every notice shall be lodged not later than fourteen days of the date of the decision of the regulatory body against which it is intended to appeal.
- (3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision, and where it is intended to appeal against part only of the decision shall specify the part complained of, and shall state the-
 - (a) name, postal, physical and service address of the appellant; and
 - (b) name and address of the respondent,and shall be signed and dated by the appellant or on his behalf by his duly authorized officer or his legal representative.
- (4) The appellant shall, not later than seven days after lodging a notice of appeal, serve a copy on the respondent.
- (5) Upon receipt of notice of appeal the Registrar shall within three days send a copy to the Commission or the relevant regulatory body.
- (6) Every person on whom a notice of appeal, is served shall, within seven days after service lodge and serve on the appellant and every other person named in the notice of appeal-
 - (a) notice of address for service; and
 - (b) notice of cross-appeal if he intends to appeal.
- (7) The notice referred to in sub-rule (6) shall state, in the case of-
 - (a) notice of address for service, both postal and physical address of, and shall be signed by the respondent; and
 - (b) notice of cross-appeal, particulars stipulated under sub-rule (3).
- (8) A notice of appeal shall be substantially in the FORM A specified in the Second Schedule to these Rules.

- (9) A notice of address for service shall be substantially in the FORM B specified in the Second schedule to these Rules.
- (10) A notice of cross-appeal shall be substantially in the FORM C specified in the Second Schedule to these Rules.
- (11) It shall not be necessary to annex a copy of the decision to the notice of appeal or notice of cross-appeal.

Application to strike-out notice of appeal or notice of cross-appeal.

8. A person on whom a notice of appeal or notice of cross-appeal has been served may at any time, apply to the Tribunal to strike out the notice on the ground that no appeal lies or that an essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Institution of appeal or cross appeal

9.-(1) An appeal or cross-appeal shall be instituted by lodging not later than thirty days of the date when the notice of appeal or cross-appeal was lodged-

- (a) ten copies of memorandum of appeal;
- (b) ten copies of record of appeal; and
- (c) security for costs where applicable

(2) A memorandum of appeal shall be substantially in FORM D specified in the Second Schedule to these Rules.

(3) The memorandum of appeal shall set forth concisely and under distinct heads, without arguments or narrative;

- (a) grounds of appeal, consecutively numbered specifying the points alleged to have been wrongly decided;
- (b) nature of the order sought from the Tribunal,

and shall be signed by the appellant.

(4) The record of appeal shall contain pleadings, proceedings and evidence upon which the decision was based.

Effect of default in instituting appeal

10. If a party who has lodged a notice of appeal or a notice of cross appeal fails to institute an appeal within the

prescribed time he shall be deemed to have withdrawn the notice of appeal or notice of cross-appeal and shall, unless the Tribunal orders otherwise, be liable to pay costs.

Service of memorandum and record of appeal

11. The appellant shall, within seven days after lodging the memorandum and record of appeal, serve copies on each respondent and to other parties to the original proceedings as the Tribunal may direct.

Proof of service of documents

12.-(1) Where any document is required to be served on any person, such document may be sent by hand or registered post.

(2) Proof of service shall be given by affidavit unless the Tribunal directs otherwise.

(3) Notice of the date fixed for hearing or delivery of judgment shall be given by summons, and where circumstances permit, by telephone or electronic means.

Publication of the appeal

13.-(1) Upon lodging of the memorandum of appeal, the Registrar shall publish a notice on the Tribunal's website, and in any widely circulated newspaper or by other appropriate means.

(2) The notice referred to in sub-rule (1) shall state-

(a) that an appeal has been lodged;

(b) names of the appellant and respondent;

(c) decision to which the appeal relates;

(d) particulars of the relief sought;

(e) summary of the principal grounds relied on; and

(f) statement indicating that any person who considers that he has sufficient interest may apply to intervene in proceedings, within seven days of publication of the notice.

Signature and sealing of summons, etc

14. Every summons, warrant, order, notice or formal document issued by the Tribunal may be signed by the Registrar or an officer authorized and shall be affixed with the seal of the Tribunal.

Reply to the memorandum of appeal.

15.-(1) Upon being served with the memorandum of appeal, the record of appeal and accompanying documents, the respondent shall, within fourteen days file a reply in ten copies and serve a copy to each of the other parties.

(2) The reply shall contain-

- (a) succinct presentation of the arguments of facts and law relied upon;
- (b) reliefs sought; and
- (c) list of documents annexed.

Application

16.-(1) An application to the Tribunal shall be made by chamber summons supported by an affidavit, but the Tribunal may entertain an oral application.

(2) Any party served with a chamber summons and who intends to challenge the application shall lodge an affidavit in reply and serve a copy to the applicant.

(3) The provisions of this rule shall not apply to applications made to the Registrar.

Application to intervene

17.-(1) Any person with sufficient interest in the outcome of the appeal may, within seven days of the publication of the notice, file an application to the Tribunal to intervene in the proceedings.

(2) The Registrar shall notify parties to the proceedings of the application and any party may file an objection within seven days upon receipt of the notice.

- (3) An application to intervene shall state the-
- (a) title of the proceedings to which the application relates;
 - (b) name, postal and physical address of the intervener;
 - (c) address for service;
 - (d) concise statement of the matters in issue affecting the intervener.
 - (e) party whose position the intervener intends to support; and
 - (g) grounds in support of the application.

(4) Where the Tribunal is satisfied that the intervener has sufficient interest it shall grant the application on such terms and conditions as it may deem fit.

Statement of intervention

18.-(1) Where the application is granted the intervener shall within seven days file a statement of intervention containing-

- (a) succinct presentation of the facts and arguments supporting the intervention;

- (b) reliefs sought; and
- (c) list of documents annexed and a copy of every document upon which the intervener relies;

(2) Parties to the proceedings may, within seven days, file a reply to the statement separately or jointly.

List of authorities and copies of judgment to be referred to

19.-(1) A party who intends, at the hearing of an appeal or application, to rely on the judgment in any reported case or to quote from any book or authority shall lodge with Registrar a list containing the titles of the case or cases with their citations and the names, authors and edition of the book or authority and serve a copy of that list on the other party.

(2) A party who intends, at the hearing of an appeal or application, to rely on the judgment in any unreported case shall, at or before the hearing, produce ten copies of that judgment.

Consolidation

20. Where two or more proceedings are pending in respect of the same decision or which involve the same or similar issues, the Tribunal may, on its own motion, or upon application by any of the parties, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated or heard together.

Sittings

21. The Tribunal may hold its sittings in such places as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

Admission of documents

22.-(1) The Registrar may refuse to accept any document which does not comply with the requirements of these Rules.

(2) A person who is dissatisfied with the decision of the Registrar rejecting any document may require the matter to be referred to the Chairman for his decision and, in the case of-

(a) oral application, at the time when the decision is made; and

(b) written application, within forty-eight hours of the decision.

Extension of time

23. The Tribunal may extend the time limited by the Rules or by its decision whether before or after the expiration of

that time.

PART III HEARING AND DECISIONS

Notice of hearing

24.-(1) The Registrar shall give notice of hearing date of not less than ten days to the parties but such notice may not be necessary where the date was fixed with the consent of the parties.

(2) Where the matter in issue is of an urgent nature, the Tribunal may dispense with the requirements of sub-rule (1).

Quorum

25. For purposes of hearing an appeal or application the Tribunal shall be constituted by not less than three members including the Chairman.

Order of addresses

26.-(1) The Tribunal shall hear first the appellant or applicant followed by the respondent and then the appellant or applicant in rebuttal.

(2) At the hearing of an appeal, where notice of a cross-appeal has been given, the Tribunal shall ordinarily hear the appellant first on the appeal, followed by the respondent on the appeal and on the cross-appeal, then the appellant in reply on the cross-appeal.

Rejection of appeal or application

27.-(1) The Tribunal may reject an appeal or application in whole or in part at any stage in the proceedings where-

- (a) the memorandum of appeal or the application discloses no valid ground;
- (b) the applicant does not have sufficient interest in the decision; and
- (c) the appellant or applicant fails to comply with any rule, direction or order of the Tribunal.

(2) Where the Tribunal rejects an appeal or application it may make any consequential order it considers appropriate.

Proceedings to be conducted in public

28.-(1) Proceedings of the Tribunal shall be conducted in public unless the Tribunal decides otherwise.

(2) The Tribunal shall observe principles of natural justice, avoid formality and technicality of rules of evidence as much as possible with a view to ensuring just,

expeditious and economical handling of the proceedings.

- Confidentiality* 29.-(1) Where a party intends that any document lodged or file be treated confidentially he shall make an application in writing-
- (a) at the time of lodging appeal or filing application;
 - (b) within four days of getting the knowledge of document, indicating the words or paragraphs for which confidentiality is requested.
- (2) The application for confidential treatment shall state specific reasons, and the Tribunal may require the application to supply a non-confidential version.
- (3) In the event of an objection the Tribunal shall decide the matter after hearing the parties.

- Power to reappraise evidence and to take additional evidence* 30.-(1) In respect of any appeal, the Tribunal may-
- (a) re-appraise the evidence and draw inferences of facts;
 - (b) in its discretion, take additional evidence or direct that additional evidence be taken by the commission or the relevant regulatory body, and
 - (c) call any person or expert as witness
- (2) In the event that the Tribunal determines to take additional evidence such evidence may be oral or by affidavit and the Tribunal may allow cross-examination.
- (3) The parties shall have the right to be present when additional evidence is taken.

- Power to order for report* 31. In dealing with any appeal or application, the Tribunal may order the Commission or the relevant regulatory body to submit a report on any matter related to the proceedings.

- Powers of the Tribunal to confirm, reverse or vary orders etc.* 32. The Tribunal may, in dealing with any appeal or application-
- (a) confirm, reverse or vary the decision of the Commission or the relevant regulatory body;
 - (b) remit the proceedings to Commission or the relevant regulatory body with such directions as may be appropriate;
 - (c) order the Commission or the relevant regulatory body to conduct fresh proceeding; and

(d) make any necessary incidental or consequential order.

Decisions to be embodied in orders

33.-(1) Every decision of the Tribunal on an appeal or application other than a decision on an application made informally in the course of a hearing shall be embodied in an order.

(2) Every order shall show the date on which the decision was given and the order extracted.

Rectification of errors

34. A clerical or arithmetical error in a judgment or order may be rectified by the Tribunal either on its own motion or on application by an interested person.

Communication of decision

35.-(1) The Registrar shall send to the Commission or the relevant regulatory body an order embodying the decision of the Tribunal.

(2) The Registrar shall inform any party to the proceedings who was not present of the decision of the Tribunal.

Procedure on non-appearance

36.-(1) If on a day fixed for hearing, the appellant or applicant does not appear, the appeal or application may be dismissed unless the Tribunal adjourns the hearing.

(2) If, the appellant or applicant appears and the respondent fails to appear, the appeal or application shall proceed unless the Tribunal adjourns the hearing.

(3) Where an appeal or application is dismissed or allowed the party in whose absence the appeal or application was dismissed may apply to the Tribunal to restore or re-hear the appeal or application as the case may be, if he shows that he was prevented by sufficient cause from appearing.

(4) An application under sub-rule (3) shall be made within seven days of communication of the decision.

Penalty for obstruction of the Tribunal.

37. Any person who obstructs the Tribunal shall be liable to a fine of not less than one hundred thousand shillings and not exceeding five million shillings as provided for under the Act.

Withdrawal of appeal or

38.-(1) The appellant or applicant may at any time after

application instituting his appeal or filing an application and before it is called on for hearing, lodge with the Registrar a notice that he does not intend further to prosecute the appeal or application.

(2) Upon receipt of the notice, the Tribunal shall mark the appeal or application withdrawn with costs unless the respondent consented to the withdrawal.

(3) No fresh appeal or application shall be brought by the same appellant or applicant in relation to the decision which is the subject of the withdrawn appeal or application.

Costs 39. The Tribunal may make such order as to costs as it deems fit.

Security for costs 40. The Tribunal may at any time direct that security for costs be deposited.

Costs improperly incurred 41. If it appears to the Tribunal that costs have been incurred improperly or without reasonable cause, it may specifically order reimbursement by any person who caused the costs.

Improper agreement for remuneration 42. An agreement whereby the remuneration of an advocate is dependent upon the results of the proceedings before the Tribunal shall be void.

Application of the Taxation of Costs Rules GN. No. 515 of 1991 43. For the purposes of these Rules, the Advocates' Remuneration and Taxation of Costs Rules, 1991 shall apply.

Judgment 44.-(1) At the close of the hearing the Tribunal may give its judgement immediately or on some future day.

(2) The judgement of the Tribunal shall be made in writing and signed by all members forming the panel and may be pronounced by any member of the panel or the Registrar, provided that where for any reason a member is prevented from signing the judgement as deliberated and agreed upon by the panel, signatures of the remaining members shall suffice.

(3) The judgement shall indicate the date when it is delivered.

(4) Judgements and orders of the Tribunal shall be enforced and executed in the same manner as judgements and orders of the High Court as provided for under the Act.

*Review
decision* of 45. The Tribunal may, on its own motion or upon application by any party, review its decision or order.

Fees 46. Fees set out in the First Schedule to these Rules shall be payable in respect of matters and services specified therein.

*Revocation
G.N.No. 184
of 2006* 47. The Fair Competition Tribunal Rules, 2006 are revoked.

First schedule

Fees

(Under rule 46)

Part I: Fees in connection with appeals

1. Upon lodging a notice of appeal – Shs. 15,000/=
2. For preparing record of appeal for each folio or part thereof – Shs. 500/= (provided the amount payable does not exceed Shs. 300,000/=).
3. Upon filing a memorandum of appeal - Shs. 150,000/=
4. Upon lodging a notice of cross-appeal – Shs. 15,000/=

Part II: Fees in connection with applications

1. Upon filing chamber summons – Shs. 50,000/=
2. Upon filling an affidavit – Shs. 15,000/=

Part III: Fees in connection with Intervention proceedings

1. Upon filing an application of intervention – Shs. 15,000/=
2. Upon lodging statement of intervention – Shs. 150,000/=
3. Upon filing reply to the statement of intervention – Shs. 50,000/=

Part IV: Fees in connection with documents to be filed

1. Upon filing a list of authorities and copies of judgement – Shs. 20,000/=
2. Upon filing a list of document annexed to the statement of intervention – Shs. 5,000/=
3. Upon filing other document Shs. 2,000/= per folio provided that the amount payable shall not exceed – Shs. 100,000/=

Part V: Miscellaneous.

1. For issuance of summons, warrant or notice of the Tribunal – Shs. 10,000/=
2. For supply of a copy of judgement or order of the Tribunal – Shs. 500/= per folio (provided that the amount payable shall not exceed – Shs. 200,000/=).

Fair Competition Tribunal Rules

GN. No. 189 (Contd)

Second Schedule

Forms

THE FAIR COMPETITION TRIBUNAL

FCT FORM A (Rule 7(8))

In the matter of an intended appeal No. of 20.
Between.....Appellant(s)
And

.....
.....Respondent(s)

(Appeal from the decision of (the Commission/Regulatory Body)

In.....of 20.....
Dated.....20.....

NOTICE OF APPEAL

TAKE NOTICE that.....being dissatisfied with the decision of.....(the Commission/Regulatory Body) given at.....on the.....day of.....20..... intends to appeal to the Tribunal against the whole decision or part thereof namely

..... The address for service of the Appellant is

It is intended to serve copies of this notice on:

.....
.....

Dated this.....day of.....20.....

Signed: Appellant

Lodged in the Registry of the Tribunal atthis.....day of.....20.....

.....
Registrar

THE FAIR COMPETITION TRIBUNAL

**FCT FORM B
(Rule 7(9))**

In the matter of an intended appeal No.....of 20.....

Between.....Appellant(s)

And

.....

.....

.....Respondent(s)

(Appeal from the decision of (the
Commission/Regulatory Body)

In.....of 20.....

Dated.....20.....

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of the Respondent(s) served with notice of
appeal is.....

.....

.....

Dated this.....day of.....20.....

Copies to be served on:

.....

.....

Signed:.....

..... Respondent(s)

Lodged in the Registry of the Tribunal atthis.....day of.....20.....

.....

Registrar

FAIR COMPETITION TRIBUNAL

**FCT FORM C
(Rule 7(10))**

In the matter of an intended appeal No.....of 20.....

Between.....Appellant(s)

And

.....

.....

.....Respondent(s)

(Appeal from the decision of..... (the
Commission/Regulatory Body)

In.....of 20.....

Dated.....20.....

NOTICE OF CROSS-APPEAL

TAKE NOTICE that on the hearing of this appeal, the Respondent will content that the decision be varied or reversed to the extent and in the manner and on the grounds that:

- 1.
- 2.
- etc.

It is proposed to ask the Tribunal for order/orders.

It is intended to serve this notice on:

.....

.....

.....

Dated this.....day of.....20.....

Signed:.....

.....Respondent(s)

Lodged in the Registry of the Tribunal atthis.....day of.....20.....

.....
Registrar

FAIR COMPETITION TRIBUNAL

FCT FORM D

(Rule 9(2))

In the matter of an appeal No.....of 20.....
 Between.....Appellant(s)
 And

Respondent(s)
 (Appeal from the decision of..... (the
 Commission/Regulatory Body)
 In.....of 20.....
 Dated.....20.....

MEMORANDUM OF APPEAL

.....the Appellant(s) to the
Tribunal against the whole decision or part thereof on the grounds that:

1.
2.(etc)

It is proposed to ask the Tribunal for order/orders.

.....

Signed:.....Appellant(s)

Copies to be served on:

Lodged in the Registry of the Tribunal atthis.....day of.....20.....

.....
Registrar

Dar es Salaam
14th December, 2006

LAUREAN B. KALEGEYA
Chairman, Fair Competition Tribunal