ORIGINAL S-44-

IN THE FAIR COMPETITION TRIBUNAL
AT DAR ES SALAAM

(APPEAL NO.1 OF 2007)

JUMA MPUYA .....APPELLANT
VERSUS
CELTEL TANZANIA LIMITED.....RESPONDENT

(Appeal against the Decision of Tanzania Communications Regulatory Authority Complaint Committee dated 22nd July, 2006)

JUDGEMENT

Dissatisfied with the decision of the Tanzania Communication Regulation Authority (TCRA), (a decision made by its Complaint Committee under delegated powers), the Appellant appealed to this Tribunal.

The Appellant appeared in person while Mr. Mwandambo, Advocate, appeared for the Respondent.

The Appellant puts his grounds of appeal and elaboration thereof together in what he terms *"UFAFANUZI WA RUFAA"*. Under Rule 9(2) of the Fair Competition Tribunal Rules, this does not qualify to be called a "Memorandum of appeal" for it does not subscribe even closer to the format prescribed in FORM D of the 2nd schedule to the Rules nor Rule 9(3) which states:

> *"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".

For this particular appeal however, the Tribunal has disregarded this non-compliance because the Tribunal Rules became operational after the Appellant had already knocked at the doors of the Tribunal. Thus, we shall paraphrase the Appellant's grievances as can be discerned from his document entitled *"UFAFANUZI WA RUFAA"*.

The Appellant's complaints can be grouped under four grounds:

- one, that the Committee erred in law by grossly under-estimating the damages suffered due to SIMCARD REJECTED scenario occasioned by the Respondent and awarding shs one thousand per day instead of shs.40,000/= claimed.

- two, that the Committee erred procedurally and in law in awarding costs refund for a single trip to Dar es Salaam on 17/6/2006 when he came to attend the Committee's proceedings in total disregard of other preceding trips he made while making a follow up of his complaint.

- three, that the Committee still erred even in its award under ground two because it disregarded the *"breakdown computation"* in relation to the number of days covered and the allowance rates.

- four, and, finally, that the Committee erred in law in failing to punish the Respondents accordingly in terms of the law having convicted them.

In its ruling, the Committee observed and found as follows:

"4.1 The Committee evaluated the case as presented by each

party as well as responses during cross examinations. The Committee is satisfied that the Complainant's complaint is genuine.
The Respondent reconnected the Complainant's number after a long time.

There was negligence on the part of the Respondent that led to reallocation of the Complainant's number.

The erroneous swap of number 0748-650081 instead of 0748-650082 was not mentioned anywhere in Respondent's letter to TCRA.

4.2 Respondent did not copy the complainant on their response to TCRA. However, the Complainant's financial claim is quite high and some of the costs are not directly linked to the disruption of service.

5.0 DECISION
The Committee doth hereby make the following orders:

5.1 Respondent should write a letter of apology to Mr. Juma Mpuya for failing to deliver service and resolve his complaint within a reasonable time and manner.

*5.2 Respondent should compensate airtime credit worth Tshs.30,000*5 months=150,000 for the period that his services were disrupted. Tshs.30,000 being the average monthly usage by the Complaint.*

5.3 Respondent should pay costs of the Complainant's transportation to and from Dar es Salaam for the hearing on June 17th 2006 as follows;

Flight-Dar-Mt-Dar	*(120,000*2)*	=	*240,000*
Local Transport	*(20,000*2)*	=	*40,000*
Per diem	*(40,000*2)*	=	*80,000*
Sub Total		=	*360,000*
Add Airtime		=	***150,000***
GRAND TOTAL		=	***510,000"***

Arguing his appeal, the Appellant adopted his *"UFAFANUZI WA RUFAA"*, amplifying further that indeed earlier on he had two telephone lines – TTCL and MOBITEL but that these were being used when he was stationed at Igunga before moving to Mahuta, Mtwara; that in any case, Mahuta had no MOBITEL services till November, 2006 while TTCL has none todate and that therefore he had no alternative service at his disposal; that in his capacity as a police Inspector charged with investigations, disruption of his telephone services affected his work, lowered his respect, denied him *"commendations, recommendations"* and award of distinguished services' medals from his superiors because they no longer trusted him apart from loss of vital investigative contacts like those he was making with Zambia and asked for due punishment to the Respondent as stipulated under S.48 of Tanzania Communication Regulation Authority's Act (No.12/2003).

In his *"UFAFANUZI WA RUFAA"*, the Appellant insisted that the Respondent sabotaged his Sim-Card and that the Committee misdirected itself in awarding damages termed *"airtime-credit worth"* which was not his claim instead of damages for SIM-CARD REGISTRATION REJECTION which deleted all his saved records causing great sufferings, socially and psychologically – that for this kind of suffering, shs.40,000/= per day, claimed, is reasonable as it is the government rate for officers of his rank for *"disturbance and/or subsistence allowance"* while shs.1000/= awarded *is "very low indeed, very unfair, and inhumane"*; that the Committee committed injustice to him by holding that the claimed *"costs are not direct to the disruption of the service"*, while they resulted from *"rejecting and incapacitating of the total functions of Sim-card."*

The Appellant stated further that the Committee misdirected itself on the number of days spent in Dar es Salaam and in disregarding proof of tickets/receipts by production of POLICE LOSS REPORT of 16.6.2006 let alone stating that he was in Dar es Salaam on personal errands.

He called to his aid a decision by Msumi, J (as he then was) in **Revocatus I. Kidaha vs National Housing Corporation (1988) TLR 59,** insisting that he deserves substantial damages consequential to Respondent's trespass to his goods (i.e the rented Simcard).

In response, Mr. Mwandambo, while adopting his reply to the *"UFAFANUZI WA RUFAA"*, started by attacking failure by the Appellant to attach a copy of a record of proceedings as required by Rule 9 of the Tribunal Rules, charging that as a result it is not clear which evidence was before the Committee; insisted that as a result of this, the Appellant's assertion that the two telephone lines he had were utilizable only at Igunga is not supported by the record hence he goes to support the Committee's finding that he had alternative mobile telephone services; that the allegations of loss of commendations and recommendations and promotion(s) are not supported hence should be rejected.

Regarding S.48 of Act 12 of 2003, Mr. Mwandambo insisted that this comes into play after a conviction has been entered before a competent forum which is not the case here, adding that in any case, the Respondent has already complied with the Authority's decision.

In his reply, he had also stated that re-allocation of the Appellant's number to another customer was a *"technical error occasioned by typing the digit 1 instead of 2"*, and which error could be solved within a short time if he had acted promptly in notifying the Respondents which he did not; that there is no where in the ruling where it is stated that the police report was accepted let alone a fact that a mere report does not prove theft having taken place; that shs.40,000/= claimed is not supported by proof of fact or law; that the two alternative numbers [Nos.0741650081 (now 0713650081) and 0262650081] are discerned from his complaint form; that if he had been encountering such sufferings as alleged he would have acted promptly; that the Committee has no power to award damages and that even if it had, there was no established loss or injury to warrant awarding the same; that the **Revocatus case** is irrelevant as that one related to trespass on land while the present dispute is disruption of services apart from failure to establish how, in his status, he suffered injury or monetary loss to a tune of shs.24 million for failure to communicate with his relatives and business associates let alone the nature of business he was doing which required extensive use of telephone resulting in such loss upon disruption. He prayed for dismissal of the appeal with costs.

In rejoinder, on the question of a copy of record of proceedings, the Appellant argued that while it is necessary, procedurally, before courts of law, it is not a mandatory requirement under the Tribunal proceedings, adding that if they wanted it, the Respondent should have applied for the same; that he reflected on the existence of the TTCL and Mobitel services because Respondents made reference to it in para.6 of their reply; that the assertion that the Authority's decision has already been complied with is a

lie. Insisting on what he submitted regarding section 48 of Act 12/2003, he said that it should be read together with S.17 and S.6 thereof.

Before going further, we should dispose of the issue raised regarding absence of a copy of the record of the Committee's proceedings.

We don't go with the Appellant's assertion that a copy thereof is only required in court proceedings and not before the Tribunal. As rightly stated by Mr. Mwandambo, Rule 9 is clear on this. The same is required to be attached to the Memorandum of Appeal. Rule 9(4) states: *"The record of appeal shall contain pleadings, proceedings and evidence upon which the decision was based"*. And, while proceedings before the Tribunal should avoid technicalities where substantive justice has to be done, unless dictated otherwise by circumstances of a particular case, Rules of the Tribunal should be complied with. We have already explained elsewhere that strict compliance in this appeal has not been made a condition precedent because the Rules came into operation in December 2006 when this appeal had already started simmering. That aside however, from the nature of the disputes that are envisaged to come before the Regulatory Authorities and thence appeals to this Tribunal it is not difficult to imagine a situation where the complaints and arguments would purely be made through documentations leading to a decision thus making it impossible to have a record of proceedings generally found in court proceedings and for that matter envisaged under Rule 9 of the Rules. The Tribunal would wish to put it clearly that in such circumstances the appeal would not be lacking in format if lodged without such proceedings which in any case would be non-existent. The documentations relied upon would suffice.

We would go further and say that the Tribunal, in a fitting situation may also proceed and determine an appeal in which copies of proceedings have not been filed if they are not necessary for the just determination of the said appeal.

We appreciate however that generally, presence of proceedings, showing which evidence was tendered, which was admitted or rejected is very important in enabling the Tribunal know the grounds or basis which led to the particular decision by the Authority.

For the appeal at hand, considering the nature of the grounds of appeal and the undisputed facts, this Tribunal is satisfied that it is in a position to determine the said appeal without a copy of the record of proceedings before the Committee in a format envisaged under the rules.

Now for the merits. We shall start with grounds one to three of the paraphrased grounds of appeal.

For appreciation of the arguments let us travel through the undisputed facts leading to the state of controversy at hand.

On 28th June, 2004, while stationed at Mahuta, Newala, Mtwara, as a police officer, the Appellant bought from the Respondent a SIM-CARD with No.0748 819736 bearing serial No.8925505010005197362. Subsequently, on his request and treading on his choice, the Respondent changed his original number and gave him special No.0748 650081. Until 28th August,

2004, he went on enjoying use of his special number. His enjoyment however came to abrupt dead end on that date (28th August, 2004) when his phone displayed SIM-CARD REGISTRATION REJECTED.

Immediately, he contacted the Respondent's customer care on number 100. The operators thereat did not assist him as they kept on telling him to hold on, and, finally advised him to visit the Respondent's Head office in Dar es Salaam upon his insistence and calling many times.

As an employee he could not make it earlier than 26th January, 2005, when he called at the Respondent's Ex-Telecoms office in Dar es Salaam and was told that his special number had been sold to another customer due to his failure to recharge his account, an assertion which was not true because by 28th, August, 2004, Appellant's number had a balance of shs.3,600/= and as per subscriber de-registration procedures, the said number, with such balance could not have been ready for re-sale earlier than December 2004.

Dissatisfied with the Ex-Telecoms office's explanation Appellant visited the Respondent's Head office at Kijitonyama where records revealed that an error had been committed in typing *"1"* instead of *"2"* while Registering another customer's number hence the cut off of services to him. The Appellant's telephone services were restored (that was on 27th January, 2005).

The Appellant was not amused by the conduct of the Respondent in this matter. In February 2005, he lodged a complaint with TCRA regarding the Respondent's acts. In March, TCRA wrote a letter to the Respondent

seeking explanation on the complaint and steps taken. In May, the Respondent replied to the Authority that what happened was due to inadvertency and *"without malice and the whole episode was handled in a most professional manner upon being reported"* and, that the complainant *"regrettably delayed to report the fault preventing earlier intervention"* by them. That letter was never copied to complainant.

Upon receipt of the Respondent's letter, the Authority notified Appellant in writing that it cannot determine the complaint because it was *"frivolous or vexatious"* in terms of S.41 (2) (b) of Act 12 of 2003, upon which the Appellant acting under S.40(5) of the Act requested the Authority to refer the *"complaint to a Committee of the Authority for decision"*. That is how the Committee of Complaint came to be seized with the matter.

The above will not suffice to give a full picture without touching on what the Appellant has all along claimed and which he says the Committee under – awarded. Again, his own words in the claim as presented would clearly paint the actual picturesque – they are follows:-

> *"8. ..... kutokana na CELTEL kutokuwa waungwana bali wakaidi katika kushughulikia malalamiko yangu hali iliyopelekea niongeze nguvu na juhudi za ziada katika kushughulikia suala hili, ninafikia hatua ya kuwataka wanilipe gharama na fidia kama ifuatayo*
>
> *8.1: Fidia kutokana na usumbufu wa jumla kwa siku zote simu yangu 0748 650081 ilipohujumiwa bila hatia kwa kusomeka 'SIM CARD REJECTED' tangu tarehe 28/08/2004 hadi ilipofunguliwa tarehe 27/01/2005 152 @ 40,000/=* ***6,080,000/=***
>
> *8.2: Fidia kwa usumbufu wa kushughulikia shauri hili baada ya CELTEL kutoonyesha ushirikiano bali ukaidi juu ya*

malalamiko yangu licha ya tahadhari niliyowapa katika memo yangu aya ya 12.4 ya kwamba gharama zitazotokana na ucheleweshо wa kutoshughulikia muafaka. Hii ni kwa mujibu wa K/F 41(J) cha TCRA Act No.12/2003. ***24,000,000/=***

8.3: *Gharama za kufuatilia huko CELTEL HQ DSM tangu tarehe 25/01/2005 hadi 02/02/2005 kwenda kulumbana hadi kurudishiwa laini yangu ambazo ni:-*
8.3.1: Nauli Mahuta – Mtwara – Mahuta 2@ 5,000 10,000/=
8.3.2: Nauli Mtwara – Dar – Mtwara 2@ 120,000 240,000/=
8.3.3 Malazi Mtwara 2 na Dar 6, siku 8@ 40,000 320,000/= ***570,000/=***

8.4: *Gharama za kuwasilisha vielelezo/nyaraka kwa CELTEL HQ Dar es Salaam kwa tarehe 01/04/05 had 06/04/2005 kama inavyothibitishwa katika aya ya 1.(i) ya barua ya CELTEL KWA Tume ambazo ni:-*
8.4.1: Nauli Mahuta – Mtwara – Mahuta 2@ 5,000 10,000/=
8.4.2: Nauli Mtwara – Dar – Mtwara 2@ 120,000 240,000/=
8.4.3 Malazi Mtw. 2 na Dar 3 yaani 5 @ 40,000 200,000/= ***450,000/=***

8.5: *Gharama za kuwasilisha memorandamu kwa CELTEL na nakala kwa TUMEWASILI kwa tarehe 26/04/05 had tarehe 06/05/2005 ambazo ni:-*
8.5.1: Nauli Mahuta – Mtw – Mahuta 2@ 5,000 10,000/=
8.5.2: Nauli Mtwara – Dar – Mtw 2 @ 120,000 240,000/=
8.5.3 Malazi Mtw. 2 na Dar 8 yaani 10 @ 40,000 400,000/= ***650,000/=***

8.6: *Gharama za kufuatilia jibu la CELTEL kwa TUME kwa vile hakunipatia nakala na hapo hapo kuwasilisha Complaint-form tarehe 18/08/05 hadi 24/08/02005 ni:-*
8.6.1: Nauli Mahuta – Mtw – Mahuta 2@ 7,500 15,000/=
8.6.2: Nauli Mtw – Dar – Mtw 2 @ 125,500 251,000/=
8.6.3 Malazi Mtw. 2 na Dar 4 yaani 6 @ 50,000 300,000/= ***566,000/=***

8.7: ***Gharama za kuhudhuria kikao hiki cha kamati ya TUME tangu tarehe 15/06/06 had 21/06/06 ambazo ni:-***
8.7.1: Nauli Mahuta – Mtw – Mahuta 2@ 7,500 15,000/=
8.7.2: Nauli Mtw – Dar – Mtw 2 @ 125,500 251,000/=
8.7.3: Malazi Mtw. 2 na Dar 4 yaani 6 @ 50,000 300,000/= ***566,000/=***

8.8: *Jumla kuu ni shilingi thelathini na mbili milioni, mia nane themanini na mbili elfu tu.* ***32,882,000/=***

8.9: *Pamoja na fidia nyinginezo ambazo kamati hii itaona zinafaa nilipwe kwa mintarafu ya shauri hili."*

As also found by the Committee, the Tribunal is satisfied that indeed the Appellant missed his telephone services for a long time: 28th August 2004 – 27th January, 2005 and that this resulted from Respondent's negligence in re-allocating his line to another customer.

In arriving at its award, unfortunately, the Committee did not detail reasons. It just gave a decision. The above notwithstanding, the Committee's ruling is clear; that it evaluated cases for the respective parties and naturally this cannot mean anything else other than evaluating evidence. We are satisfied therefore that though no reasons are provided the Committee acted on the available evidence.

The Tribunal having carefully considered all the evidence presented before the Committee and the Committee's Ruling, is satisfied that paraphrased grounds one – three of the appeal have some substance though not to the extent clamoured for by the Appellant.

The Tribunal is minded of a clear principle of law that he who alleges has to prove. And in controversies of this nature reasons should be given for arriving at a certain decision and conversely, it should be stated why a certain piece of evidence is rejected.

In its Ruling, the Committee made just one observation as to why it substantially rejected the Appellant's claims – *"the Complainant's financial claim is quite high and some of the costs are not directly linked to the disruption of service."* In granting costs for one trip to Mtwara (Return) the

Committee is silent regarding the Appellant's claim that his tickets got lost as per Police loss Report he lodged on 16/6/2006.

We shall start with the question of transport costs falling under the quoted claim, item 8.3 – 8.7.

The Tribunal's finding is that the Appellant did not provide sufficient evidence to establish the costs he incurred on Air-tickets and Bus tickets. Our considered view of the police loss Report is that just by itself such costs are not established. The Appellant was required to do more than this. While one may give him a benefit of doubt regarding Bus tickets, none can be extended to him on Air-tickets. He is a senior police officer, an Inspector. He knows his way in public offices. Airlines keep their travellers' records and therefore it was simple for him to approach either the Mtwara or Dar es Salaam offices wherever he made the purchase of the alleged relevant tickets for extracts thereof or letters confirming the same.

The only evidence he produced is an Air ticket indicated to have been issued on 16th October, at 13.00 hours and even this one is not without problem, for example, the year is not indicated.

If indeed it is what it portrays, considering the period of dispute, it could not have been in 2004 as he did not travel to Dar es Salaam in that year (according to his evidence) and neither can it be 2006 because by October the Committee had already delivered its decision. We thus remain with 2005. That being the case, the Tribunal has failed to place it in any of the dates falling under item 8.3-7 when Appellant claims to have travelled to

Dar es Salaam. The closest possibility that one can suppose is that he used it for his journey falling under item 8.7 (15-6-2006 to 21-6-2006). One would however doubt why he bought a ticket in October 2005 for travelling in June, 2006. Even more surprising is how it survived the alleged theft in which it is alleged all other tickets were stolen and for which a loss Report was made a day before or on a day he just left Mtwara for Dar es Salaam (16/6/2006).

All the above, among others, have created doubts in the minds of the Tribunal as to whether the said ticket was used in the said year and for the alleged journey and purpose. The Tribunal would have rejected this piece of evidence if it weren't for the Committee's award of a single (R) trip (most likely also influenced by the said ticket), as well as the Respondent's failure to challenge it. However, the Tribunal is of the view that the grantable sum is the one indicated thereon (shs.227,000) and not shs.240,000/= awarded by the Committee whose source has not been disclosed.

Because of the above finding, the Tribunal is not persuaded by the Appellant of existence of other Air travel expenses. The Tribunal is however satisfied that the Appellant travelled to Dar es Salaam from Mahuta on the occasions enumerated in item 8.3 – 8.7 and that the Committee's award of costs for a single trip is unrealistic. Having concluded that there is no other evidence of travelling by Air, the next, possible, cheapest means available is by Bus. For this we don't have evidence to fix the rates. Our finding is that, apart from the Air travel expense under item 8.7, the rest shall be taken to be travels by Bus (Mahuta-Mtwara-Dar es Salaam and back) and for the relevant refundable rates, the Appellant and the

Respondent should work jointly to get them from Companies whose buses were plying between the routes then.

Again, under the said items (8.3 – 8.7) claimed also are subsistence allowances. The Tribunal is satisfied that the Appellant is entitled to the same though not as claimed. We are of the view that the total days are either exaggerated or were not necessary for the purpose. We are of the view that two days for each trip at Mtwara and three days at Dar es Salaam meet ends of justice.

In conclusion, on grounds two and three, we are satisfied that the Committee erred by underestimating the travelling expenses and per diem as explained above.

We turn to ground one. On this, neither the Appellant nor the Committee persuaded us that the compensatory amount for the disruption of Appellant's line caused is shs.40,000/= or shs.1000/= per day, respectively.

To start with, the Tribunal is on all fours with Appellant that what he claimed is different from what the Committee awarded – *"Airtime credit worth."* The Appellant's claim is compensation for the consequences he allegedly suffered due to SIM-CARD REGISTRATION REJECTION. That apart, the Tribunal has failed to understand how the Committee arrived at a finding that Appellant had an average monthly Airtime usage of Tshs.30,000/= as there is no evidence to that effect. And even if he did, this was not the nature of his claim as already stated and therefore could not have been a basis of determining what he deserves to be paid.

On the other hand, the Tribunal is in agreement with the Committee that the claims under item 8.1 (shs.6,080,000/=) and item 8.2 (shs.24,000,000/=) are highly exaggerated. The Appellant did not prove any monetary or particular loss he suffered due to the disruption of his telephone line. His claim that he lost contacts with friends, relatives, work associates and above all lost positivity in his employment as an Inspector of police detailed with investigation at most remains at an assertion ground. Yes, his contacts saved in his telephone line got lost but this does not mean that he could not get another line, make necessary contacts and over a reasonable period regain his contact level. The allegations that he lost confidence of his superiors hence lost recommendations, promotions and medals for distinguished services are neither here nor there because, to start with, the line was not official but private. It would stun common sense if the police force was to punish its officer for loss of his personal property which he was using ex-gracia to provide services, if any. In such circumstances, one would expect sympathy and actually assistance to put him in the former position instead of condemnation. The Appellant's story sounds too good to be true.

The above aside, a senior police officer of his rank, with the alleged sensitive and key contacts could not fold his hands and stay put awaiting Celtel's awakening from slumber. Common sense dictates would enjoin him to have looked for an alternative line, if indeed the situation as put by him existed at all. For this reason we find that it is unnecessary for us to discuss the newly introduced issue regarding whether or not Appellant had two other telephone service lines.

The Tribunal is not persuaded by the Appellant in the least on this score (degree of injury suffered). The extent of exaggerations made by the Appellant on this can be gathered from no other source than his own words, interestingly designed and expertly put as follows:

> ***"Sim-card ilipokuwa rejected ilifuta kabisa kumbukumbu zangu zote nilizozisevu sawa na mtu alinitia pingu, jela au kizuizini kwa ubabe/uonevu na kwa hivyo nilifadhaika, nikadhalilika, nikafedheheka na kunyanyasika kimwili, kiroho na kimawazo na mbele ya ndugu zangu, jamaa, marafiki na hata kutetereka siri zangu kikazi....."***

If indeed he had suffered even one eighth of the extent he paints in the above quoted words he could not have failed to adduce even a piece of evidence to back him up.

The above said, the Tribunal is not blind to the obvious that the Respondent was negligent, pure and simple. Apart from allocating the Appellant's sim-card number to another customer, it took them months (August 2004 to Jan, 2005) to take heed of his complaints and even then, after he had made various travels to Dar es Salaam from Mahuta (not a close distance by all standards). The Tribunal also takes recognizance of the fact that indeed the Appellant lost some of his contacts, be it relatives or friends or even work-mates for whatever time that it took to regain the same.

The Respondents' claim that Appellant did not take prompt action flies in their face by what is admitted in evidence that he (Appellant) contacted customer care No.100 immediately, who provided no assistance but rather advised him to come to Dar es Salaam. The Respondents cannot disassociate themselves from their Customer Care number and their negligence and careless behaviour is portrayed by their failure to make a

follow up on what was wrong with their customer's line after reporting through the in-house contacts at their disposal. It did not require Appellant's physical presence at Respondents' Kijitonyama Head offices to discover the re-allocation of his number, its retrieval and reconnection. A functioning system would have acted immediately after reporting: after all, one expects customer care No.100 to assist the customer in the real sense of the word by setting on the system to check on the cause of complaint and not to add salt to injury by causing unnecessary expenses to him as was the case here.

Now, having so found, what is the remedy available to Appellant.

We are mindful of the legal principles that damages are the pecuniary compensation, obtainable by success in an action, for a wrong, which is either a tort or a breach of contract, the compensation being in the form of a lump sum, which is awarded unconditionally. The object of an award of damages is to give the plaintiff or injured party compensation for the damage, loss or injury he has suffered so as to put him in position he would have been in had the tort not been committed or had the contract been performed.

We are also satisfied that the said damages are of different types or kinds.

In our case, under ground one, we are dealing with general damages. And it is at this juncture that we should hurriedly point out that the decision **(Revocatus case)** referred to by the Appellant, as

submitted by Mr. Mwandambo, is not relevant here, apart from the obvious that the damage here cannot be termed **substantial** as the Appellant would wish to impress so as to justify his claim of shs.32 million.

Before proceeding, we should also touch on Mr. Mwandambo's submission that the Committee cannot award damages. With respect, the powers granted under the law are very wide and they cover that aspect as well.

S.41 of Act 12 of 2003, empowers the Authority to make many orders, including, orders;

> *"for such other relief as may be deemed necessary or reasonable"*

[S.41(6) sic! – we think it is a typographical error and that what was intended was, S.41(j)]. Clearly, this covers awarding damages.

Taking into consideration the limited inconvenience caused on Appellant, we are satisfied that for the Respondent's acts of negligence, a compensatory sum of shs.1.5 million will meet the ends of justice and we award the same accordingly.

That said, let us turn to the last ground of complaint grounded on S.48 of Act 12 of 2003.

We are in agreement with Mr. Mwandambo that this section is not relevant. For the benefit of Appellant and clarity, let us reproduce the same. It states:-

> *"48- (1) Any person who contravenes or fails to comply with*

a provision of this Act, commits an offence against this Act and is liable on conviction to a fine of not less than the equivalent in Tanzania shillings of United States dollars three thousand or imprisonment for a term not less than twelve months or to both such fine and imprisonment.

(2) A person shall commit an offence against this Act if he-

(a) Aids, abets, counsels or procures;

(b) conspires with others;

to commit an offence against this Act.

(3) Any person, who suffers loss or damage as a result of an offence against this Act, may recover by compensation for such loss or damage from the person who committed that offence whether or not that person has been convicted of an offence.

(4) Any person, making a claim under sub-section (3) within four years after the loss or damage is suffered or within four years after the person becomes a ware of the offence, whichever is the later, a claim shall be made by way of a complaint provided for under section 40 of this Act.

(5) Where a person charged with an offence under this Act is a body corporate, every person who, at the time of the commission of the offence was a director, manager or officer of the body corporate may be charged jointly in the same proceedings with such body corporate and where the body corporate is convicted of the offence, every such director, manager or officer of the body corporate shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(6) For the purposes of this section, any partner of a firm shall be jointly and severally liable for the acts or omissions of any other partner of the same firm done or omitted to be done in the course of the firm's business.

(7) For the purposes of the provisions of this section, a penalty for non-compliance of an order of the Authority shall be a fine which shall be equal to a civil debt"

The wording thereof is as clear. This makes reference to criminal offences whose nature is as prescribed under subsection (2). The section is not concerned with other civil liabilities as the ones claimed here.

Again, S.17 referred to by the Appellant is far from what he tries to impress. This section creates an offence against a person who fails to respond to the Authority's summons to provide information. It does not create an offence to the Authority itself and Respondents are not in breach of this either.

S.17 states as under:

"17-(1) Where, the Authority has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, any officer of the Authority may, by summons signed by the a (sic) Director General or Secretary of the Authority served on that person, require that person –

(a) to furnish the information in writing, signed by him, in the case of a body corporate, signed by a competent officer of the body corporate:

(b) to produce the document to the Authority;

(c) to appear before the Authority to give evidence

(2) A summons under this section shall specify the required time and manner of compliance.

(3) The Authority may require that any evidence referred to under this section be given on oath or affirmation, and in that case, the Director General, the Secretary or any officer of the Authority may administer the oath or affirmation.

(4) Any person shall not be excused from complying with summons under this section on the grounds that compliance may tend to incriminated the person or make the person liable to a penalty, save that information, documents and evidence provided in answer to a summons will not be admissible in any proceedings against the person other than proceedings under this Act, sector

legislation, the Fair Competition Act, 2003 or any environment protection legislation.

(5) Any person who without lawful excuse, refuses or fails to comply with a summons under this section; commits an offence and is liable on conviction to a fine of not less than the equivalent in Tanzanian shillings of United States dollars five hundred or to imprisonment for a term not less six months or both such fine and imprisonment.

(6) Where the Authority has reason to believe that a person is in possession or control of any information or document which may assist in the performance of its functions and that person has refused or failed to supply such information or document, the Director-General, Secretary or any officer of the Authority may apply to the Fair Competition Tribunal or a competent court for issuance of a warrant authorizing a police officer to enter into any premises believed to contain or into which a documents is kept or hidden and conduct search and make copies or take extracts of documents therein.

(7) On application under subsection (6), the Chairman of the Tribunal or any authorized person, may, on application issue a warrant authorizing any police officer to forcibly enter the premises to conduct the search and make copies or take extracts of documents there in.

(8) Any person, who knowingly gives false or misleading information or evidence in purported compliance with a summons under this section, commits an offence."

We are surprised that the Appellant made reference to the two sections in this regard.

We make a similar observation on his reference to S.6. The section, as the marginal notes display just at a glance, details *"Functions of the Authority"*. Even at the danger of making this judgement unnecessary long, for purposes of erasing any doubts that may exist in Appellant's mind, we take liberty to reproduce the contents thereof.

"6.(1) The functions of the Authority shall be-

(a) to perform the functions conferred on the Authority by sector legislation;

(b) subject to sector legislation –

(i) to issue, renew and cancel licences;

(ii) to establish standards for regulated goods and regulated services;

(iii) to establish standards for the terms and conditions of supply of the regulated goods and services;

(iv) to regulate rates and charges;

(v) to make rules for carrying out the purposes and provisions of this Act and the sector legislation;

(c) to monitor the performance of the regulated sectors including in relation to –

(i) levels of investment;

(ii) availability, quality and standards of services;

(iii) the cost of services;

(iv) the efficiency of production and distribution of services, and

(v) other matters relevant to the Authority;

(d) to facilitate the resolution of complaints and disputes;

(e) to take over and continue carrying out the functions formerly of the Tanzania Communications Commission and Tanzania Broad-casting Commission;

(f) to disseminate information about matters relevant to the functions of the Authority;

(g) to consult with other regulatory authorities or bodies or institutions discharging functions similar to those of the Authority in the United Republic of Tanzania and elsewhere;

(h) to administer this Act;

(i) to perform such other functions as may be conferred on the Authority by this Act or any other law.

(2) The Authority shall not perform its functions in contravention of any international agreement to which the United Republic is a party.

(3) In the performance of its functions, the Authority shall not award or cancel a licence with an with an exclusivity period or universal service obligations or having a term of five or more years without prior consultation with the Minister and the relevant sector Minister.

(4) In addition to the preceding provisions of this section, the Minister may from time to time as occasion necessitates it, give to the Authority directions of a specific or general character on

specific issues, other than in relation to the discharge of the regulatory function, arising in relation to any sector, for the purpose of securing the effective performance by the Authority of its policy, functions and compliance with the code of conduct.

(5) Any direction given by the Minister in accordance with subsection (4) shall be in writing and published in the Government Gazette."

The Appellant may have had a different piece of legislation in mind but for sure the three sections do not assist him.

In conclusion, the appeal succeeds in part. The Committee's decision, save for the writing of the letter of apology under item 5.1, is set aside.

Flowing from the Respondent's negligence, the Appellant is entitled to:

(i) a total of 15 days subsistence allowance at Dar es Salaam (three days under each of item 8.3 – 7 of his claim): 15 x 40,000/= = shs.600,000/=

(ii) a total of 10 days subsistence allowance at Mtwara (2 days under each of item 8.3 – 7 of his claim): 10 x 40,000/= = 400,000/=

(iii) refund of air-transport charges for a return journey: Mtwara-DSM-Mtwara, shs.227,000/= as per ticket tendered.

(iv) refund of bus fare for the trips falling under items 8.3 – 8.6 (Mahuta – Mtwara – Dar es Salaam (Return).

(v) refund of bus fare for the trip falling under item 8.7 (where he travelled by Air): Mahuta – Mtwara – Mahuta (Return).

(vi) General damages for the injury suffered due to disruption of the telephone services, shs.1.5 million.

For awards under (iv) and (v), Appellant and Respondent to act jointly for purposes of getting actual rates from the bus operators plying the routes then.

Respondent is also condemned in costs.

L. B. Kalegeya – Chairman

Janet Mbene – Member

Jonathan Njau - Member

Prof. J. M. Lusugga Kironde – Member

Felix Kibodya – Member

Delivered on 20/3/2007

L. B. Kalegeya – Chairman

Janet Mbene – Member

Jonathan Njau - Member

Prof. J. M. Lusugga Kironde – Member

Felix Kibodya – Member