

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

TRIBUNAL APPEAL NO. 13 OF 2017



JIMMY GABRIEL ALLOYCE..... APPELLANT

VERSUS

VODACOM (T) LIMITED.....1ST RESPONDENT

TANZANIA COMMUNICATIONS REGULATORY

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

RULING

This is a ruling on the preliminary objection raised by the counsel for the first respondent that the appeal is incompetent for contravening Rule 11(3)(b) of the Fair Competition Tribunal Rules. GN. No. 219 of 2012 (hereinafter referred to as "the Rules").

At the hearing of the objection counsel Motey appeared to represent the appellant while counsel Simpemba appeared to represent the 1st respondent and also held brief for Daffa, Advocate for the 2nd respondent.

From the outset we wish to state that the notice of preliminary objection was filed in contravention of Rule 19(3) of the rules. It was filed a day before a date fixed for hearing of the appeal.

That is, it was filed on 23rd day of January, 2018 while hearing of the appeal was fixed on 24th day of January, 2018. The hearing could not proceed because the counsel for the appellant requested for adjournment as he was required to attend funeral services. He has also requested for the objection to be disposed by way of written submissions because he was served a day before the hearing date. Taking into all these circumstances, the hearing was adjourned to another date to be fixed by the Registrar.

Today, that is, 1st day of June, 2018 is the date fixed by the Registrar for hearing. It be noted that the purpose of Rule 19(3) of the rules is to allow parties time to prepare for hearing. This fact is fully appreciated by the counsel for the appellant. Further in terms of Rule 31(1) of the Rules, the Tribunal may invite parties to address it on any matter. Since the counsel for the appellant was aware of the notice of the preliminary objection since January, 2018 and since the counsel for the appellant had ample time to prepare for hearing and since the Tribunal has power to invite parties to address it on any matter then parties were allowed to proceed with the hearing of the preliminary objection.

Counsel Simpemba was brief in his submission that the appellant has failed to comply with Rule 11(3)(b) of FCT Rules which is couched in mandatory words. In support of his submission he cited the case of **Sarah Martin Muna Vs. Vodacom (T) Limited and Tanzania Communication Regulatory Authority**, Appeal No. 3 of 2017 (unreported) that held the

wording of Rule 11(3)(b) of the Rules is couched in mandatory way by the use of the word "shall" which according to section 53 of the interpretation of laws Act means mandatory requirement. He thus prayed for the appeal to be rejected with costs.

Counsel Motey replied that though the appeal was lodged with some missing documents but later on the appellant was able to rectify it by lodging additional list of documents after being allowed by the Registrar to do so. So to him, appeal now is competent. He therefore prayed for the objection to be dismissed. In the alternative, he prayed to be allowed to amend the appeal.

It was re-joined by counsel Simpemba that the Registrar has no powers to order amendment thus he insisted the appeal is incompetent and it cannot be amended because there is nothing to be amended.

Having heard the submissions of the counsels, we wish to start with the powers of the Registrar to see as to whether what was filed by the appellant later on made his appeal proper?

The powers of the Registrar of the Tribunal are provided and indicated under Rule 25 of the FCT Rules 2012 and for easy of understanding we reproduce the contents of the said Rule 25 herein:-.

"The Registrar or, in his absence an officer authorised by the Registrar and approved by the Chairman, shall have powers to:

- (a) *Sign orders of the Tribunal where the Chairman vacates office after pronouncing judgment without signing the order;*
- (b) *Certify orders of the Tribunal;*
- (c) *Admit or reject applications for execution proceedings in respect of the decisions and orders of the Tribunal;*
- (d) *Order that a decision or order of the Tribunal be executed;*
- (e) *Issue process for execution of decisions and orders of the Tribunal; and*
- (f) *Perform functions and exercise powers of the Taxing Master under Taxation and Remuneration of Advocates Rules within the Tribunal”.*

The Registrar of the Tribunal can also reject a document under Rule 12(1) of the FCT Rules. In all these provisions, there is no such powers as granting extension of time of filing additional documents conferred to the Registrar. We therefore agree with Mr. Simpemba that the learned Registrar acted ultra vires by granting a prayer by the appellant to present additional documents and consequently an order given ultra vires is a non-consequential one.

Having ruled that Registrar had no powers to extend time for filing additional documents, let us revert back to the preliminary objection raised. There is no contention from both parties that the appeal was filed on 29/8/2017; the documents was incomplete thus contravened Rule 11(3)(b) and (6) of the Rules; and that is why the appellant prayed before the Registrar to

rectify the defects by filing additional documents; and since we have ruled that the Registrar had no power to grant such order, what remains now is an incomplete Appeal for want of the record of the same.

Without much ado, an appeal which contains no record of Appeal is incompetent and cannot detain us here, neither can it be cured by amendment as prayed by the learned counsel for the Appellant.

We therefore find merits in the objection raised and we uphold the same by rejecting the appeal in terms of Rule 31(1)(c) of the FCT Rules for failure to lodge a record of Appeal as required by Rule 11(3)(b) and 11(6) of the FCT Rules. The respondent should have their costs.



Judge Barke M.A. Sehel – Chairperson

Hon. Mustafa Siyani – Member



Dr. Theodora Mwenegoha – Member

01/06/2018

Ruling delivered this 1st day of June, 2018 in the presence of Mr. Richard Lucas Motey, Advocate for the Appellant, Thomas Simpemba, Advocate for the 1st Respondent also holding brief of Mr. John Dafa for the 2nd Respondent.



Judge Barke M.A. Sehel – Chairperson



Hon. Mustafa Siyani – Member



Dr. Theodora Mwenegoha – Member

01/06/2018