

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

**TRIBUNAL APPEAL NO. 14 OF 2019**



**KWANZA BROADCASTING LTD T/A KWANZA  
ONLINE TV.....APPELLANT**

**VERSUS**

**TANZANIA COMMUNICATIONS REGULATORY  
AUTHORITY (TCRA).....RESPONDENT**

**RULING**

The respondent has raised a *plea in limine litis* namely:

**That, the Appeal is incompetent in law for failure to comply with Rule 11(3) and (6) of the Fair Competition Rules, G.N. No. 219 of 2012"**

Rule 11(3) of the Fair Competition Rules, G.N. No. 219 of 2012 (hereinafter referred to as FCT Rules) provides for the institution of Appeal or Cross Appeal. Rule 11(6) mandatorily requires the record of appeal or cross appeal to contain **pleadings, proceedings** and the **decision appealed** against. (Emphasis ours).

When the Appeal came for hearing of the *plea in limine litis*, learned counsel Nobert Mlwale conceded with the preliminary objection that the record of appeal lacks a copy of proceedings.

Counsel Nobert went further to concede that Rule 31(1)(c) of the FCT Rules (supra) requires the Tribunal to reject the appeal if the appellant fails to comply with any rule.

It was, however, the prayer of counsel Nobert that the Tribunal should waive costs for two reasons. **One**, it was an oversight for the appellant for not attaching the copy of proceedings with the record of Appeal. **Two**, under Rule 12(1) of the FCT Rules (supra), the Registrar ought to have rejected the record of appeal if it was incompetent.

The prayer for not awarding costs was objected by counsel Gloria Rwakabalira and Jehovaness Zacharia for the respondent.

Upon considering the arguments of both parties, we find no good reason of not awarding costs to the respondent.

The respondent upon being served with the incompetent record of Appeal by the appellant lodged a reply to memorandum of Appeal, a notice of preliminary objection, and a list of authorities to be relied upon. Further, the respondent entered appearances before this Tribunal.

In all those occasions the respondent incurred costs. The High Court of Tanzania had an occasion to enumerate on the importance of awarding costs to winning litigant in the case of **Bahati Moshi Masabile T/A Ndono Filing Station (appellant) V. Camel Oil (T) (respondent) Civil Appeal No. 216 of 2018**. The Court in that case observed that, as a general rule, costs must be awarded to the winning litigant. The

Court went further to give two reasons as to why costs should be awarded to the winning party:

**One**, costs serves among other purposes, to bar parties from filing hopeless cases. **Two**, award of costs puts the winning party to his/her financial position prior to being sued as far as the costs of the case are concerned.

Being guided with the aforesaid reasons, we find there are no good reason as to why the Tribunal should refuse to award costs to the respondent.

In the premises, the preliminary objection is upheld for failure to comply with the requirement of rule 11(6) of the FCT Rules (supra). The appeal is therefore rejected in terms of rule 31(1)(c) of the FCT Rules. The appellant to pay costs. Order accordingly.



**Hon. Stephen M. Magoiga – Chairman**



**Hon. Yose J. Mlyambina – Member**



**Dr. Theodora Mwenegoha – Member**

**28/11/2019**


Ruling delivered this 28<sup>th</sup> day of November, 2019 in the presence of Norbert Mlalwe Advocate for the Appellant and Jehovaness Zachariah, Gloria Rwakibarila and Vitalia Kidabulo Advocates for the Respondent.



**Hon. Stephen M. Magoiga – Chairman**



**Hon. Yose J. Mlyambina – Member**



**Dr. Theodora Mwenegoha – Member**

**28/11/2019**