

**IN THE FAIR COMPETITION TRIBUNAL OF TANZANIA**

**AT DAR ES SALAAM**

**APPEAL NO. 1 OF 2014**



**EMIRATES AIRLINES.....APPELANT**

**VERSUS**

**IRFAN M. DINANI.....1<sup>ST</sup> RESPONDENT**

**AND**

**TANZANIA CIVIL AVIATION**

**AUTHORITY(TCAA).....2<sup>ND</sup> RESPONDENT**

**RULING**

Appeal before us arises from Emirates Airlines as service provider, breaching duty of confidentiality by unauthorized disclosure of passenger information to independent travel agent (third party).

IRFAN DINANI, 1<sup>st</sup> respondent herein, made the first reservation on line on 25<sup>th</sup> February, 2008 for him to travel on 25<sup>th</sup> March, 2008 by Emirates Airline. Later on, he tried to change his booking so that he could fly on 19<sup>th</sup> March, 2008. Mr. DINANI was advised by Emirates Dar office that, there was no seat available on 19<sup>th</sup> March, 2008. 1<sup>st</sup> Respondent contacted his wife

in Dubai who managed to secure a waitlisted seat for 19<sup>th</sup> March, 2008.

On 18<sup>th</sup> March, 2008, 1<sup>st</sup> respondent received a call from some one who identified himself as Emirates staff trying to mislead him to confirm his original booking of 20<sup>th</sup> March, 2008 rather than waitlisted booking of 19<sup>th</sup> March, 2008. The phone call was made by staff from Travel Agent (third party) pretending to be Emirate staff. Mr. DINANI was neither advised nor informed about his status of his seat for 19 March 2008 and asked to confirm of his 1<sup>st</sup> booking which he did not. 1<sup>st</sup> respondent's wife in Dubai later informed Mr. DINANI that his waitlisted space of 19<sup>th</sup> March, 2008 was confirmed, but detected that someone around mid-day cancelled that booking and Mr. DINANI was then confirmed to travel on 20<sup>th</sup> March, 2008. Mr. DINANI had to undergo several attempts and extra efforts to have his available seat for 19<sup>th</sup> March, 2008 restored and managed to fly on his preferred date i.e 19<sup>th</sup> March, 2008.

On his return to Dar es Salaam, 1<sup>st</sup> respondent managed to meet with Emirates' local manager and explained the entire situation. Mr. Ahli Bader, the then local manager, apologized for the shoddy treatment in exchange for 1<sup>st</sup> respondent forbearance from reporting the matter to TCRA, and the media, made an offer of settlement. It was orally agreed by local manager that 1<sup>st</sup> respondent rebate ticket at a future date would be approved.

Upon follow up of the offer as agreed, the 1<sup>st</sup> respondent was verbally advised by local manager, Mr. Bader Ahli, that rebate ticket application has been denied by Emirates in Dubai and instead Mr. Ahli verbally offered 30% discount on first class ticket. 1<sup>st</sup> respondent found it wasteful to pay for a 1<sup>st</sup> class ticket, instead he was advised that Emirates was only willing to give him a 10% discount on one business class ticket. 1<sup>st</sup> respondent found turn of events to be a breach of their earlier settlement. Despite various attempts to sort the matter, Emirates Tanzania did not heed to 1<sup>st</sup> respondent demand that necessitated filing of complaint to the authority against Emirates Airline with reference no. TCCA/0.10/274/172 requesting for USD 10,000 as general damages following Emirates committing of an unauthorized disclosure of the complaints' confidential information, for wasted time and energy, frustration, unnecessary inconveniences and money spent in communicating with Emirates in effort to resolve the matter amicably.

The Committee of the Authority on 12 May 2009 having heard from all parties and taken into account the complaints request for compensation and general admission by Emirates decided that 1<sup>st</sup> respondent be compensated with two business class roundtrip tickets for DAR-DUBAI-DAR(DAR-DXB-DAR). Being dissatisfied by the decision of the committee of the Authority, Tanzania Civil Aviation Authority (The Regulatory Body), filed notice of appeal together with Memorandum of appeal. Appellant filed on the

same date letter dated 17 April 2014 addressed to Tanzania Civil Aviation Authority the 2<sup>nd</sup> respondent herein, notifying the Tribunal on the request by the appellant to be supplied with copies of pleadings, proceedings and decision of the 2<sup>nd</sup> respondent.

The requested document were supplied to the appellant in pieces, decision by letter dated 12 May proceeding and other documents by letter dated 26 May, 2014. All correspondences between the appellant and 2<sup>nd</sup> respondent on supply of necessary document were being copied to both Tribunal and Mr. Irfan M. Dinani (1<sup>st</sup> respondent).

On being served Mr. DINANI filed notice of preliminary objections namely.

1. The Appellant, by serving the 1<sup>st</sup> respondent on 10 June, 2014 with the Memorandum of appeal filed with the Register on 30 April 2014 failed to comply with Rule 14 of the Fair Competition Tribunal Rules 2012.
2. The grounds for appeal set forth in the appellant's Memorandum of Appeal do not Conform with the requirements of Rule 11 (5)(a)(i).

On the date set for hearing, Mr. Gerald Nangi represented the appellant, 2<sup>nd</sup> respondent by Miss Kitakwa while 1<sup>st</sup> respondent was in person.

On hearing the Tribunal moved parties to address whether there is appeal before the tribunal.

Mr. Nangi for the appellant submitted that the appeal is properly filed. Memorandum of records of appeal was filed on 10/06/201. Appeal will be complete if Memorandum of appeal and records of appeal are filed. No restrictions that memorandum of appeal should be filed together with records of appeal.

Mr. Nanga further submitted that, there is no provision in the FCT Rules that says documents should be filed together and that there is no restriction in the FCT Rules that record of appeal be filed separately. Appellant counsel referred Tribunal to the case of Samwel Mtivangala 1981 TCR 319 where Samatta J, held that, the court of law should ensure that law and common sense goes together so that even people in the Daladala should not ask why law is not going together with common sense. Mr. Nangi urged the Tribunal to see that, appeal is properly before filed, and that, Rule 11 of FCT Rules has been complied with.

1<sup>st</sup> respondent Mr. Irfan M. DINANI submitted that Memorandum of appeal was filed on 30<sup>th</sup> April, 2014. He was served with the same on 10<sup>th</sup> June, 2014. According to the rules, appellant was supposed to serve respond within 7 days from the date Memorandum of appeal is filed. Appellant has

failed to comply with the law i.e that he has failed to serve respondent as required by the rules. Since there is no appeal before the Tribunal, so the same should be struck out insisted 1<sup>st</sup> respondent Mr. Dinani.

On the other hand, the 2<sup>nd</sup> respondent's counsel Miss Kitakwa submitted that appeal and records of appeal should be filed together. The two documents meant to go together. It is not proper to file documents separate because other parties i.e respondent will not be able to comply with Rule 19 of FCT Rules. Miss Kitakwa further submitted that the wording of section 11(2) of FCT can only be usefully if appellant had not filed Memorandum of appeal. Appellant ought to have waited for necessary documents (records of appeal) to attach to the Memorandum of appeal before filing. In rejoinder, Mr. Nangi for the appellant submitted that memorandum of appeal are served to the respondent after being filed. Rule 19 of FCT Rules stipulates that once the respondents are served, with memorandum of appeal, they should file replay therefore respondents were served after attaching the necessary documents to the Memorandum of appeal.

As correctly submitted by the 2<sup>nd</sup> respondent's counsel Miss Kitakwa, memorandum and record of appeal should be filed together. These documents are meant to go together. The filing of Memorandum of appeal alone, without records of

appeal, amount to notifying this Tribunal that one intend to raise mentioned grounds but it does not amount to filing of appeal before the Tribunal. Before admitting the appeal, tribunal has to be satisfied that, there is prima facie appeal. That cannot be ascertained by mere grounds of appeal. Memorandum of appeal must contain the decision appeal against, for the Tribunal to satisfy itself that there is prima facie appeal. It is odd to think that memorandum of appeal filed without attaching decision complained of and treat the same as an appeal. Appeal before this Tribunal is properly filed once memorandum of appeal attached with the decisions complained of and record of appeal are filed before necessary steps are taken by the Tribunal.

Rule 11(3) of the Tribunal Rules 2012 reads as follows:

11(3) An appeal shall be instituted by lodging with the Tribunal-

- (a) five copies of the memorandum of appeal or cross-appeal for the use of the Tribunal and for each party in the appeal;
- (b) five copies of record of appeal or cross-appeal for the use of the Tribunal and for each party in the appeal; and
- (c) security for costs where applicable

Mr. Nanga's assertion that, there is no requirement to attach decision as one of the documents from records of appeal is a misconception. The wording of Rule 11(3) speaks loudly, the word used is "shall". It is mandatory requirement and therefore need to be complied stringently. Apart from being contrary to Rule 11(3), in fact it is against common sense to argue that, appeal properly before the Tribunal by mere filing memorandum of appeal without attaching decision complained of. To bless Mr. Nangi's assertion is to turn this Tribunal in to a general dump for thinks to be sorted out later by Scavengers.

So it is our views that, there is no appeal before us, because memorandum of appeal was filed without attaching records of appeal. Assuming that, by mere filing memorandum of appeal without record of appeal, amounts to an appeal, yet, appellant did not serve respondent as required by Rules 14 of the FCT Rules GN No. 219 of 2012.

Rule 14 provides-

The appellant shall, within seven days after lodging the memorandum and record of appeal, serve copies on each respondent.

As correctly submitted by the 1<sup>st</sup> respondent Mr. IRFAN M. DINANI and admitted by Mr. Nangi for the appellant, memorandum of appeal was filed on 30<sup>th</sup> April, 2014.



Respondents were served on 10<sup>th</sup> June, 2014, being 41 days from the date the memorandum of appeal was filed, contrary to rule 14 of the FCT Rules.

To the Tribunal, not only there is no proper appeal before us, but also, appellant did not comply with rule 14 of FCT Rules. It goes without saying that that non-compliance of rule 11(3)(5) and 14 of the FCT Rules attract for striking of the purported appeal before the Tribunal.

Accordingly the purported appeal is hereby struck out with costs.

It is so ordered.



**Judge Z. G. Muruke – Chairman**



**Mrs. Nakzael Lukio Tenga – Member**



**Mr. Gregory Ndanu - Member**

**08/12/2014**

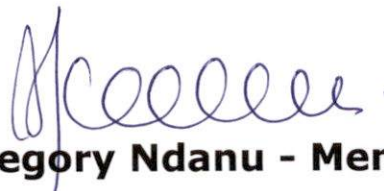
Ruling delivered this 8<sup>th</sup> day of December, 2014 in the presence of Mr. Gerald Nangi, learned Counsel for the Applicant, Mr. Irfan M. Dinani 1<sup>st</sup> Respondent who appeared in person and Ms Kitakwa for the 2<sup>nd</sup> Respondent.



**Judge Z. G. Muruke – Chairman**



**Mrs. Nakzael Lukio Tenga – Member**



**Mr. Gregory Ndanu - Member**

**08/12/2014**