

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

TRIBUNAL APPEAL NO. 13 OF 2018



AIRTEL TANZANIA LTD.....APPELLANT

VERSUS

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

RULING

When the appeal came for hearing this 27th day of November, 2018 senior learned counsel Alex Nguluma for the appellant prayed for the matter to be a mention session instead of a hearing session. The reason advanced by Alex Nguluma Counsel was that the appellant is missing some information. So, the appellant has filed a chamber summons for discovery and the respondent are already served but the matter is not yet scheduled for hearing.

The prayer for making this session a mention session was strongly resisted by learned counsel Adronicus Byamungu for the respondent. Counsel Adronicus Byamungu was of the view that the alleged application is ingeniously filed to delay the hearing of the appeal.

Counsel Byamungu submitted that after they had gone through the application the respondent noted that the application and the discovery arose since 17th August, 2018 when the respondent supplied the appellant the record of proceedings and there were no issues on the record and the appellant went ahead and filed Misc. Appl. No. 15 of 2018 without any complaint on the completeness of the appeal.

Counsel Byamungu told the Tribunal that the chamber summons was served without a date of appearance and it does not show before whom the respondent should appear. As such, counsel Byamungu prayed that the Tribunal should not consider it as it is time barred. It was supposed to be filed within 60 days.

Counsel Byamungu went on to inform this Tribunal that after this Tribunal struck out the application for stay, the appellant on 6th November, 2018 filed application No. 690 of 2018 before the High Court of Tanzania at Dar es Salaam Registry seeking an injunction restraining the respondent from enforcing the decision and compliance order pending hearing of this appeal. That, the application before the High Court is essentially a replica of the application that was struck out.

Counsel Byamungu submitted that, if the appellant believes that this appeal cannot be heard until they have the documents, let that be a good reason to struck out this appeal.

The other reason advanced by counsel Byamungu was that the alleged chamber application is not before us. To bolster up that argument, counsel Byamungu invited this Tribunal to refer its

decision in application No. 15 of 2018, when the respondent delayed to file an affidavit in reply, the Tribunal refused to entertain it because it was not before it.

Counsel Byamungu therefore prayed the hearing of the appeal to proceed as scheduled.

In rejoinder, counsel Nguluma told the Tribunal that the appellant has no interest to delay the appeal. However, he conceded that the application has yet been given a date.

On the time limit issue, counsel Nguluma rejoined that the issue whether the application is time barred or not cannot be determined summarily.

It was the view of Alex Nguluma counsel that the appellant has to take all actions to safeguard interests within the limits of the law.

We have given due regards to the submissions of both parties, we are of settled view that there is no good reason to make this hearing session a mention session.

This hearing was scheduled since 18th October, 2018, whoever had any genuine legal complaint should have made it timely before this hearing. We hesitate to comment anything on the alleged filed application before this Tribunal and before the High Court for the same are not at our disposal.

Further, the submission that the application for discovery will enrich this appeal lacks back up because the application is not yet placed before us for consideration. Even if there is such

application filed amused to be told that it was filed a day before hearing while parties had prior notice since 18th October, 2018.

As such, we re tempted to agree with the respondent that this is nothing else than a pure delay tactic. In the end we decline the prayer and order the hearing of the appeal to proceed as scheduled. Ordered accordingly.



Hon. Barke M.A. Sehel – Chairperson



Hon. Yose J. Mlyambina – Member



Dr. Theodora Mwenegoha – Member

27/11/2018