

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



CONSOLIDATED TRIBUNAL APPEALS NO. 3 & 4 OF 2018

INDEPENDENT TELEVISION LIMITED.....1ST APPELLANT

EAST AFRICA TELEVISION LTD.....2ND APPELLANT

VERSUS

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

RULING

When the two consolidated appeals were called for hearing, counsel Ngalo representing the appellants notified the Tribunal that while he was preparing for the hearing of the appeals, he noticed that he has not complied with Rule 11(3)(b) of the Fair Competition Tribunal Rules GN. No. 219 of 2012 (hereinafter referred to as "FCT Rules"). He said he noticed that there are missing records of appeal as such he prayed for an extension of time under Rule 26 within which to file a record of appeal. He contended that he is making the prayer for extension of time because of three reasons: First, the Registrar failed to notify them to rectify the records as required by Rule 12 of the FCT

Rules; secondly, it is for the interests of justice tht the appellants are afforded right to be heard and the extension would not prejudice the respondent as they have not filed any objection, and lastly, he said the rules do not prescribe the consequences for failure to comply with Rule 11(3) of the FCT Rules.

It was replied by learned advocate Rwakibarila representing the respondent that even the respondent noted the anomaly when they were preparing or the hearing of the appeals but she said they could not raise a preliminary objection because they were already out of time since Rue 19(3) of the FCT Rules requires a respondent o raise an objection three (3) days before the hearing. She therefore prayed for the appeal to be dismissed with costs because the irregularity is still there.

In rejoinder it was submitted tht there is no law or rules that requires for two appeals to be dismissed when a party failed to comply with Rule 11(3)(b) of the FCT Rules. He said normally where there is a failure to comply with procedural rules then the remedy is to strike out the matter but not to dismiss. The counsel therefore reiterated his earlier prayer of an extension of time.

The Tribunal carefully listened to the rival submissions and it is gathered tht both parties agree tht the two consolidated appeals lack record of appeal.

Rule 11(3)(b) of the FCT Rules provides:

"An appeal shall be instituted by lodging with the Tribunal five copies of record of appeal or cross appeal for the use of the Tribunal and for each party in the appeal"

It follows from the above rule that for an appeal to be properly filed, in a sense that the appeal is said to be complete, it must also contain record of appeal for the use of the Tribunal. The word used here is "shall" which according to section 53(2) of the Interpretation of Laws Act Cap.1 clearly provides that where the word shall be used in conferring a function then even words shall be interpreted to mean that the function so conferred must be performed. In that regard, the provision of Rule 11(3)(b) of the FCT Rules is couched in mandatory terms whereby its compliance is a must. In the matter at hand, it is not disputed that there is non-compliance of Rule 11(3)(b) of the FCT Rules. It is argued by counsel Ngalo that the rules are silent on the resultant consequences of its noncompliance with due respect to his submission, Rule 31(1)(c) of the FCT Rules provides:

"The Tribunal may, after giving the parties an opportunity to be heard, reject an appeal in whole or in part at any stage of the proceedings where the appellant or applicant failed to comply with any rule, direction or order of the Tribunal".

On the basis of the above position of the law and on the fact that it is not disputed that the appellants failed to comply with Rule 11(3)(b) of the FCT Rules, the two consolidated appeals are hereby rejected with no order as to costs.

Before we pen off, we wish to state that we cannot grant an extension of time to an appeal which is not properly instituted before the Tribunal as the two appeals lack records of appeal hence they are incompetent before the Tribunal.

That said, the two consolidated appeals are rejected without costs. It is so ordered.



Judge Barke M.A. Sehel – Chairperson



Hon. Yose J. Mlyambina – Member



Dr. Theodora Mwenegoha – Member

07/09/2018