

IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 1 OF 2022

GILBERT NORBERT SHEE.....APPELLANT

VERSUS

VODACOM TANZANIA PLC.....1ST RESPONDENT

TANZANIA COMMUNICATIONS REGULATORY

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

JUDGMENT

The Appellant named above being aggrieved and dissatisfied with the whole decision of the Complaints Committee of Tanzania Communication Regulatory Authority ("TCRA") dated 23rd December, 2021, herein Appeals to this Tribunal against the whole decision on the grounds that:

1. The complaints committee erred in law and fact by holding the appellant claims to be compensated for the wrongs and damages he suffered were too big for the 1st Respondent to bear.
2. The complaints committee erred in law and fact by acting biased towards the Appellant by admitting the disturbances suffered by Appellant and disregarding the Appellant for proper award compensation.

3. The complaint committee erred in law and facts by not holding the 1st Respondent liable for the breach and violation of the law rather holding the 1st respondent liable for negligence only.
4. The complaints committee erred in law and fact by failing to establish the fact that the Appellant was employed in Ethiopia and he had the potential of getting permanent employment in Ethiopia after he served there for nine(9) long months under probation.
5. The complaint committee erred in law and fact by failing to give the reasons for its decision as it is the principle of natural justice.
6. The complaints committee erred in law and fact by failing to analyze and disregard the high weight evidence presented by the Appellant.
7. The complaints committee erred in law and fact by deciding that it was fair for the 1st Respondent not to return to the Applicant the sum of money illegally withdrawn from appellant's M-PESA account on time.
8. The complaints committee erred in law and fact by failing to hold the 1st Respondent liable for illegal loan of 20,000/= shillings which was taken by the 1st Respondent without the consent or acknowledgement of the Appellant.
9. The complaints committee erred in law and fact by not only showing favours to the 1st Respondent but also awarding amount less than what the Respondent was willing to compensate the Appellant.

10. The complaints committee erred in law and fact by deciding that costs be borne by each party while the 1st Respondent was held accountable and the Appellant engaged the service of Advocates at all the time since the beginning stage of the Complaint hearing.

On those grounds, the Appellant prayed for the following orders:

1. That the 1st Respondent acts of withdrawing Tanzania shillings 898,000.00 from the Appellant's M-PESA Account is illegal and has direct connection with the claims of loss of potential employment of the Appellant in Ethiopia hence results to the claims of compensation of USD 223,000 as salaries and employment remuneration lost.
2. Compensation of Tanzanian Shillings Six hundred Million (600,000,000/-) for breach of the terms and conditions of the contract between the Appellant and the Respondent as the relationship between the Appellant is Contractual, whereas the Respondent is services provider and the Appellant is a consumer, and that, compensation is a result of loss and damages suffered, violation of Appellant privacy and rights.
3. The honourable Tribunal to declare that, the complaint committee failed to exercise its duties diligently after failing to award the costs to the Appellant in Complaint No. TCRACOMP/28/2021.
4. Tribunal to order Respondent to pay costs for this Appeal.

5. Any other orders and remedies deemed necessary by the Tribunal.

On the 9th day of November, 2022 when the parties appeared before us for hearing, by consent of all parties, the appeal was ordered to be disposed by way of written submissions. A subsequent schedule of written submissions directed that the Appellant's submissions to be filed by 21st November, 2022 Reply by the Respondent was to be filed by 7th December, 2022 and rejoinder if any was to be filed 16th December, 2022. Up until today when this matter comes for judgment, the Appellant has not lodged any submissions in support of his appeal.

On our part, we have deliberated on failure to file submissions as scheduled and the effect of non-filing of the submissions as required by the law. We are of the considered view that failure to file submissions in support of appeal on the day that is scheduled is tantamount to non-appearance of a party when the matter comes for oral hearing. The remedy thereto is dismissal of the matter which we proceed to so do in this appeal.

In consequence of the above findings, this appeal is hereby dismissed for want of prosecution. From the nature of the appeal and the fact that none of the parties lodged any submissions, we make no order as to costs.

Dated at Dar es Salaam this 13th day of March, 2023



Hon. Judge Salma M. Maghimbi – Chairperson

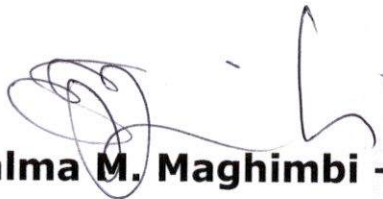


Dr. Hanifa T. Massawe – Member



Dr. Neema B. Mwita – Member

Judgment delivered this 14th day of March, 2023 in the absence of the Appellant and in the presence of Mr. Walter Massawe & Mr. Isaac Lupi learned counsel for the 1st Respondent and Mr. Francis Ramadhani, Learned State Attorney for the 2nd Respondent.



Hon. Judge Salma M. Maghimbi – Chairperson



Dr. Hanifa T. Massawe – Member



Dr. Neema B. Mwita – Member

14/03/2023

