

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



**TRIBUNAL APPEAL NO. 16 OF 2022**

**INTRA ENERGY (T) LIMITED.....1<sup>ST</sup> APPELLANT**

**INTRA ENERGY CORPORTION LTD.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**FAIR COMPETITION COMMISSION**

**(FCC).....1<sup>ST</sup> RESPONDENT**

**NATIONAL DEVELOPMENT CORPORATION**

**(NDC).....2<sup>ND</sup> RESPONDENT**

**RULING**

The objection raised by the respondents is that the appeal lodged is in contravention of Rule 11(6) of Fair Competition Tribunal Rules, 2012 ("FCT Rules"). Details of the objection is that the appellants have failed to file some pleadings which were lodged at the Fair Competition Commission ("FCC") during hearing of the merger application which is a subject of this appeal. We did not open up a detailed argument before we allowed Mr. Shija, learned Counsel representing the appellants, to answer the allegations, and he was humble enough to admit that indeed there are some documents submitted at FCC which were not a

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part of the records of this appeal. His argument was that those documents do not form part of pleadings as stipulated under Order VI Rule 1 of the Civil Procedure Code, Cap. 33 R.E 2019 ("CPC").

On her part, Ms. Grace Lupondo, learned State Attorney representing the respondents, disputed this fact on the ground that the missing documents included a petition, an affidavit and a reply to the petition to which; we are in full agreement with Ms. Lupondo that they are part of the pleadings as stipulated under the CPC.

Now we have an objection concerning contravention of Rule 11(6) of FCT Rules and an appellant who admits that there are missing records which connotes an admission that the Rule is contravened. The next issue is the consequences of the appeal and the subsequent orders on the contravention of Rule 11(6) of FCT Rules.

Ms. Lupondo prayed that the appeal be struck out with costs. Mr. Shija prayed that costs are waived for the appellants and he also prayed for leave to refile the appeal in case the appeal is struck out; or in the alternative; the appellant be ordered to file supplementary records. This prayer was vehemently disputed

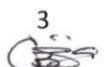


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by Ms. Lupondo. On our part, having considered the coaching of the Rule 11(6) whereby the word "shall" is used hence the connotation of mandatory compliance. On that note, we find that ordering a filing of supplementary records will not be an appropriate route to take because the omission to file part of the records contravenes Rule 11(6) hence making the appeal before us incompetent.

Having found the appeal to be incompetent, the next issue is the destiny of this appeal. Having considered the omitted documents and their role in determination of this appeal (the documents being petition and reply) which gives the 2<sup>nd</sup> appellant locus to appear before us, we direct ourselves to the provisions of Rule 31(1)(c) of the FCT Rules and proceed to reject this appeal for the appellants failure to comply with Rule 11(6) of the FCT Rules. Before we pen off, we have considered Mr. Shija's prayer to refile the appeal, we have also considered Ms. Lupondo's argument that an incompetent appeal deserves nothing but to be struck out. We shall be clear that since our Rules have provided for remedies in case of any appeal which is in contravention of the FCT Rules, which is to reject the appeal, we shall therefore stick to our Rules in determining the consequential orders thereto.



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Rule 31(2) empowers this Tribunal, upon rejecting an appeal, to make any consequential orders as it deems appropriate. To us, having deliberated, we come to a conclusion that a consequential order herein may include an order to refile this appeal within a time that we may prescribe, and today this is the route we shall take. This is because we have considered the sensitivity of the matter and what is at stake, the nature of the transaction which is involved which calls for a need to expedite the disposal of this appeal and the fact that if we reject this appeal without leave to refile, it will be quite a while before the merits of the appeal will be determined should the appellants still desire to lodge their appeal. On the other hand, if leave is granted, this will accord parties time to have the matter disposed and their rights determined within a reasonable time and have the issues in controversy settled once and for all. Should the appellants fail to lodge their appeal within the prescribed time, the 2nd Respondent will also have an opportunity to execute the decision of the 1<sup>st</sup> Respondent accordingly. It is for these crucial reasons that we have taken the liberty to allow Mr. Shija's prayer to have the appeal refiled.



All the above said and done, we sustain the objection raised and find this appeal to be incompetent for contravening Rule 11(6) of FCT Rules. Consequently, this appeal is hereby rejected under Rule 31(1)(c).

As to the prayer for costs, we have appreciated the fact that Mr. Shija conceded to the objection hence saving time of both the Tribunal and the respondents, we find it fair that each party bear their own costs.


In conclusion, this appeal is hereby rejected under Rule 31(1)(c). Under Rule 31(2) of FCT Rules, we grant the appellants seven (7) days from the Date of this ruling to refile both the notice of appeal and the appeal.



**Hon. Judge Salma M. Maghimbi – Chairperson**



**Dr. Godwil G. Wanga – Member**



**Eng. Boniface G. Nyamo-Hanga – Member**

**10/11/2022**