

PRESS STATEMENT

FCC Wins Constitutional Case Against TCC at the High Court

The High Court of Tanzania ruled out in favour of the Fair Competition Commission (FCC) case on Friday, 28th September, 2012, in a case filed by the Tanzania Cigarette Company Limited (TCC), who were challenging the constitutional mandate of the Commission proceedings, dismissing with costs the latter's arguments as being frivolous and vexatious.

TCC filed a miscellaneous civil case No. 31 of 2010 at the High Court of Tanzania challenging the constitutionality of the FCC. They argued that Section 69(1) of the Fair Competition Act (No. 8 of 2003) (FCA) contravened the Constitution of the United Republic of Tanzania.

Delivering the judgment on behalf of other panel members, Judge Prof. Ibrahim Juma stated that, on the basis of the principle of exhaustion of remedies, it was erroneous on the part of the TCC to seek remedies in the High Court through the provisions of the Basic Rights and Duties Act, 1994 without first exhausting the available lawful remedies.

Prof. Juma cited that Sections 4 and 8 of the Basic Rights and Enforcement Act, 1994, directs a party seeking redress at High Court due to breach of Sections 12 to 29 of the Constitution to have made use of all other available redress before embarking in filing a case at the High Court.

Section 8(2) of the Basic Rights and Duties Enforcement Act, 1994 provides:

“The high Court shall not exercise its powers under this section if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law, or that the application is merely frivolous or vexatious.”

According to the FCA, complaints raised by the Commission are first heard and determined by the Commission as the Tribunal of First Instance on matters circumscribed to competition law. The law allows a party aggrieved by decision of the FCC to file an appeal with the Fair Competition Tribunal.

The Judge also observed that all acts passed by the Parliament are constitutional, unless proven otherwise, contrary to the arguments raised by TCC. In view of this, it was the solid view of the court that the arguments raised by TCC in challenging constitutionality of the FCC under FCA, specifically section 69(1) of the FCA, are baseless and misplaced.

The case was being heard by a three judge-panel led by Judge Projestus Rugaziya. Other panel members who presided at the time when the judgment was delivered were Judge Lawrence Kaduri and Judge Prof. Ibrahim Juma.

ISSUED BY THE COMMUNICATIONS AND PUBLIC RELATIONS UNIT

Tuesday, 9th October, 2012