

Tanzania

Tanzania Communications Act

## Dispute Resolution Regulations, 2001

Government Notice 316 of 2001

Legislation as at 31 July 2002

FRBR URI: /akn/tz/act/gn/2001/316/eng@2002-07-31

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PDF created on 11 May 2024 at 11:37.

*Collection last checked for updates: 31 July 2002.*

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## Dispute Resolution Regulations, 2001

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# Tanzania

## Tanzania Communications Act

### Dispute Resolution Regulations, 2001

#### Government Notice 316 of 2001

Published in Tanzania Government Gazette

Commenced on 1 January 2002

*[This is the version of this document at 31 July 2002.]*

*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[G.N. No. 316 of 2001]*

#### 1. Citation

These Regulations may be cited as the Dispute Resolution Regulations.

#### 2. Definition

In these Regulations, unless the context otherwise requires:

"**Act**" means the Tanzania Communications Act<sup>1</sup>;

"**arbitrator**" means a person appointed by the Commission under regulation 6 to resolve a dispute between two contesting parties;

"**award**" means the decision of the arbitrator on the dispute and includes *inter alia*, an interim, partial or final award;

"**claim**" means a right arising out of an agreement for provision of communications services or demand (whose monetary value is not less than the equivalent in Tanzanian shillings of 1,500 USD);

"**claimant**" means the person who makes a claim against a postal or telecommunication operator;

"**Commission**" means the Tanzania Communications Commission established under section 3 of the Act;

"**conciliation**" means the intervention of an independent third party into a dispute in order to bring the disputing parties together for settlement;

"**respondent**" means a person against whom a claim is made;

"**statement of arbitration**" means the statement of claim or the statement of defence and other or further documents in the nature of pleadings or submissions.

#### 3. Conciliation

Prior to arbitration, parties shall try to resolve their dispute amicably through conciliation.

#### **4. Request for notification of arbitration**

- (1) Any party wishing to commence an arbitration shall file to the Commission a written request for arbitration, which shall include, or be accompanied by a statement of claim.
- (2) The claimant shall communicate his statement of claim in writing to the respondent and to the Commission, and the copy of the contract of service shall be annexed thereto.
- (3) The statement of claim shall include the following particulars:
  - (a) the names and addresses of the parties;
  - (b) a statement of the facts supporting the claim;
  - (c) the points at issues;
  - (d) the relief or remedy sought.
- (4) The claimant may annex to his statement of claim, any documents he deems relevant or may add a reference to the documents or any other evidence he intends to submit.

#### **5. Investigations**

- (1) The Commission shall investigate the request for arbitration and make a determination on whether or not:
  - (a) the request merits to be referred to an arbitrator;
  - (b) the dispute to be heard by the Commission itself.
- (2) In making its determination under subregulation (1), the Commission shall consider:
  - (a) the value of the subject matter;
  - (b) the nature of the dispute.

#### **6. Appointment of an arbitrator**

- (1) The Commission shall select an arbitrator from a list of arbitrators appointed every three years.
- (2) An arbitrator appointed by the Commission under subregulation (1) shall be required to have the following qualifications—
  - (a) a certificate in arbitration;
  - (b) experience in postal or telecommunications;
  - (c) competency in law, economics, engineering or social science.
- (3) An arbitrator appointed by the Commission shall be and remain at all times independent and impartial and shall not act as advocate for any party.
- (4) The expression "the Arbitrator" includes all the arbitrators where more than one has been appointed by the Commission.

#### **7. Communications with Arbitrator**

- (1) All communications from all parties shall be addressed to the Arbitrator unless the Arbitrator directs otherwise.
- (2) Where any party sends any communication to an Arbitrator (including any statement of claim and a copy of services) he shall also send copies to the other parties, including the Commission, and confirm to the Arbitrator that he has done so.

- (3) The addresses of the parties for the purpose of all communications during the proceedings shall be those set out in the statements of claim and shall include any change of address notified to the Arbitrator, all other parties and the Commission.

## 8. Submission of statements

- (1) The claimant shall within fourteen days of the notification of appointment of the Arbitrator by the Commission, send to the Arbitrator a statement of claim setting out detailed the facts and points of law on which he relies, and the relief that he claims.
- (2) The respondent shall within twenty-one days of receipt of statement of the claim, send to the Arbitrator a statement of defence stating in sufficient detail which of the facts and points of law in the statement of claim he admits and denies and on what grounds and points of law he relies.
- (3) The respondent may attach to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he shall submit in support of his defence.
- (4) In his statement of defence, or at a later stage in the arbitral proceedings, the respondent may make a counterclaim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.
- (5) The claimant may within fourteen days of receipt of the statement of defence, send to the Arbitrator a statement of reply.
- (6) All statements of arbitration shall be accompanied by copies or, if they are voluminous, list of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and where practicable, any relevant samples.

## 9. Meeting and hearing

- (1) The Arbitrator may at any time fix a date, time and place of meetings and hearings of the arbitration and shall give all parties adequate notice of the meeting.
- (2) Subject to any adjournments which the Arbitrator may allow, the final hearing shall be continued on successive working days until it is concluded.
- (3) All meetings and hearings shall be *in camera* unless all the parties require otherwise and members from the Commission may be granted permission to attend as arbitration or conciliation observers.
- (4) Any party to the arbitration may be represented at any meeting or hearing by a legal or other professional practitioner.

## 10. Evidence

- (1) Each party shall have the burden of proving the facts relied on to support his claim or defence.
- (2) The Arbitrator may require a party to deliver to the other party, within such a period of time as he shall decide, a summary of documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.
- (3) At any time during the arbitral proceedings the Arbitrator may require the parties to produce witness documents, exhibits or other evidence within such period of time as he shall determine.

## 11. Amendment to the claim or defence

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the Arbitrator considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances:

Provided that, a claim shall not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

## 12. Default

- (1) Where, within the period of time fixed by the Arbitrator the claimant has failed to communicate his claim without showing sufficient cause for such failure, the Arbitrator shall issue an order for the termination of the arbitral proceedings.
- (2) Where, within the period of time fixed by the Arbitrator the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the Arbitrator shall order that the proceedings continue *ex parte*.
- (3) If the respondent duly notified under these Regulations fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitrator may proceed with the arbitration.
- (4) Where the claimant duly notified under these Regulations fails to appear at the hearing of the arbitration, the Arbitrator may dismiss the claim.
- (5) Where one of the parties, duly invited to produce documentary evidence, fails to do so within the prescribed period of time without showing sufficient cause for such failure, the Arbitrator may make the award on the evidence before it.

## 13. Award to be in writing

- (1) The Arbitrator shall make his award in writing and shall set out his reasons for the award.
- (2) The Arbitrator shall send his award to the Commission as soon as practicable after the conclusion of the final hearing.

## 14. Award costs of the Arbitrator

- (1) The costs of the arbitration shall be met by the unsuccessful party and such costs shall include:
  - (a) the travel and incidental expenses incurred by the Arbitrator;
  - (b) the costs of expert advice and of other assistance required by the Arbitrator;
  - (c) the travel and other expenses of witnesses to the extent which is approved by the Arbitrator;
  - (d) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitration proceedings, to the extent that the Arbitrator determines that the amount of such costs is reasonable.
- (2) The Arbitrator shall specify the total amount of costs of arbitration in his award indicating which party shall pay them, and whether any party shall pay all or part of any other costs incurred by the other party.
- (3) The fees of the Arbitrator shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the Arbitrator and any other relevant circumstances of the dispute as may be determined by the Arbitrator.

## 15. Payment and collection of award

- (1) After notification of the award to the Commission, any party may take up the award upon payment to the Arbitrator of any outstanding costs of the arbitration.
- (2) If the award has not been taken up within one month of the notification, the Arbitrator may by action recover outstanding costs of the arbitration from the unsuccessful party.

**16. Abandonment, suspension or conclusion before final award**

If the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final award is made, the parties shall pay to the Arbitrator costs incurred up to that time, in such proportions as between them as they shall agree, or on failing to agree, as the Arbitrator shall determine.

**17. Exclusion of liability**

- (1) Neither the Commission nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Regulations except that the Arbitrator (but not the Commission) shall be liable for the consequences of any conscious and deliberate wrong doing on his own part.
- (2) After the award has been made and any accidental mistake or omission corrected, the Arbitrator shall be under no obligation to make any statement to any person about any matter concerning the arbitration, nor shall any party seek to make him a witness on any legal proceedings arising out of the arbitration.

**Complaint form**

*[Editorial note: The form has not been reproduced.]*