



THE UNITED REPUBLIC OF TANZANIA

MINISTRY OF INFORMATION, COMMUNICATION
AND INFORMATION TECHNOLOGY

TANZANIA COMMUNICATIONS REGULATORY
AUTHORITY



Ref. No: EB.32/160/01/64

13th June, 2023

Chief Executive Officer,
Arusha Art Limited,
Plot 37/E India Street,
P. O. Box 423,
23103 ARUSHA.

DECISION ON COMPLIANCE ORDER

(Pursuant to the Compliance Order hearing held on 5th April 2023 at TCRA Northern Zone Office, Arusha)

1. INTRODUCTION

- 1.1 On 29th day of December, 2022, Tanzania Communications Regulatory Authority (hereinafter referred to as the “Authority”) issued to **Arusha Art Limited** (hereinafter referred to as the “Licensee”), a Regional Application Services Licence for the provision of internet services for a period of five years from 17th March 2022.
- 1.2 Among the licence conditions, the Licensee is obliged to comply with the relevant provisions of the Acts, Regulations, Authority’s directives and other laws of Tanzania.
- 1.3 Pursuant to section 6(1) of the Electronic and Postal Communications Act, Cap. 306, (R. E. 2022), any person or a company who wishes to operate any electronic communications system or offer postal communications, electronic communications or content services shall apply to the Authority for a licence.
- 1.4 In accordance with Table One of the First Schedule to the Electronic and Postal Communications (Licencing) Regulations 2018 as amended in 2022, building and operating a fibre optic network is within the scope of a Network Facilities Licence.
- 1.5 Between December 2022 to January 2023, the Authority carried out audit and assessment of the Licensee’s sites and it was revealed that the Licensee is building and operating fibre optic networks in Arusha region without having the Network Facilities Licence contrary to section 6(1) of the Electronic and Postal Communications Act (Cap 306).

2. COMPLIANCE ORDER

That on 31st day of March 2023, the Authority issued a Compliance Order requiring the Licensee to submit a written explanation and appear before the Authority **at Northern Zone Office on 5th day of April, 2023 at 14:00 am** to show cause as to why legal and regulatory actions should not be taken against the Licensee for the breach of the Law, Regulations and Licensee Conditions.

3. COMPLIANCE ORDER HEARING

The Licensee in compliance with the order, appeared before the Authority on the date set but at an earlier re-scheduled time at 12:00pm following a request by the Authority to the Licensee and the Licensee agreed. At the hearing, the Licensee was represented by Mr. G. S. Sachdev, Chief Executive Officer and Aatish K. Sachdev, Director Technical.

4. LICENSEE'S DEFENCE

4.1 In their defence, the Licensee presented a written defence vide a letter dated 4th April 2023 and made an oral submission before the Authority. In addition to the written defence, the Licensee submitted the following documents, which were received by the Authority:

4.1.1 email communications between Arusha Art and TCRA dated 25th November 2022,

4.1.2 letter dated 22nd November 2022 to TCRA from Arusha Art – Renewal of Regional Application Service Licence,

4.1.3 letter dated 2nd February 2023 to Arusha Art from Tanzania Railways Corporation – Application of Permit for Installation of Poles for Fibre Cables for internet,

4.1.4 letter dated 7th March 2023 to TANROADS from Arusha Art - Application of Permit for Installation of Poles for fibre Cables for internet,

4.1.5 various documents such as invoices, electronic funds transfers, showing payments made for various equipment ordered, TRA forms, certificate of conformity by TBS etc.

4.2 The Licensee started by presenting their letter of defence dated 4th April, 2023 as well as making verbal submissions. The Licensee stated that the company has been in business for the past twenty-six (26) years and that this was their first time to appear

before the Authority for compliance order. That they have in good books with all the authorities that they operate under.

- 4.3 The Licensee made an admission that they have only laid down the fibre cables but that despite such construction, they have not activated the cables and that none of their customers have had access to the said fibre cables. They cited that one of the constructed cables and which had not been activated yet, run from their Head Office at Plot No. 37/E in India Street to Njiro.
- 4.4 There are other cables which the Licensee admits to have constructed but claimed that they were only for their own company use. Such cables include one at Themis area which goes up to a tower to their own company devices, another located at the Unga Limited area, which goes to their off-site backup server and one which goes to the top of their office building to their device.
- 4.5 The Licensee further stated that they were forced to start constructing the fibre cables as well as installing towers in order to convince and retain their customers that they were doing something to address the unsatisfactory delivery of services following the loss of 3.5Ghz frequency as ordered by the Authority in November 2022.
- 4.6 The Licensee further submitted that they have already applied for the Network Facility licence through the Authority's Tanzanite Portal and have submitted all the required documents except the investment cost of the equipment, which they received on 30th March 2023. However, they have been unable to complete their application on Tanzanite Portal due to some technical problems in accessing the Portal, despite logging in on numerous occasions.
- 4.7 The Licensee added that while they were processing the Network Facility licence with the Authority, they have simultaneously been making applications for right of way permit from TARURA and TANROADS. So far they have secured a permit from TARURA where a letter dated 6th December 2022, the Licensee was permitted to install 200 poles along the streets of India, Nyerere, Fire, Njiro, Engira and Serengeti. They are currently waiting for TANROAD to respond. They have also made an application to Tanzania Railways Corporations for the installation of poles for internet, which were granted a permit to build 10 to 12 poles maximum across PPF Olorien area in Njiro through a letter dated 2nd February 2023.

4.8 In conclusion, the Licensee submitted that they have never intended to breach the law and admitted that they have made a mistake by laying down and constructing the fiber cables, however such mistakes were done in good faith. As such, the Licensee pleaded for consideration and leniency on the ruling to be issued by the Authority.

5 CONSIDERATION OF LICENSEE'S DEFENCE

In consideration of Licensee's defence, the Authority made the following observations: -

5.1 The Licensee's admitted to have constructed fibre optic cables in the Arusha area but denied operations of the same.

5.2 The Authority was satisfied that the Licensee has submitted their applications for Network Facilities License since 22nd November, 2022 pending the submission of investment cost of the equipment. The technical problem which hindered access by the Licensee to the Tanzanite Portal, was verified by the Authority during the hearing and found to be correct. In addition, the Licensee has made efforts to seek the necessary permits from other authorities such as Tanzania Railways Corporation, TARURA and TANROADS.

5.3 In all such representations by the Licensee, the Authority was not satisfied that they did all they could to seek to resolve the technical problem that caused them not to access the Tanzanite portal and therefore fail to complete their application for Network Facilities Licence.

5.4 The Licensee's operation is beyond the scope of its Regional Application Services Licence, irrespective of their claim that they have only been building the fiber cables so far but have not started operating.

6 DECISION

NOWHEREFORE, after considerations of the licensee's defense to non-compliance and the fact that the Licensee is an experienced operator, the Authority, by virtue of Section 114 of the Electronic and Postal Communications Act (Cap 306 R.E. 2022) and Section 48(3) of the Tanzania Communications Regulatory Authority Act (Cap 172 of Laws of Tanzania), hereby issues orders to Arusha Art Limited as follows:

6.1 To pay a fine of Tanzania Shillings Five Million Only (5,000,000.00) for having constructed fibre optic cables without a license from the Authority,

- 6.2 To complete and submit their application for a Network Facilities Licence if Licensee so desires to continue constructing and operating fibre cables; and
- 6.3 To comply with the above order within Thirty (30) days from the date of this decision.

TAKE NOTICE that, upon failure by Arusha Art Limited to implement the above orders, further legal and regulatory action will be taken without further notice.


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Dr. Jabiri K. Bakari
DIRECTOR GENERAL

Order served upon and received by **Arusha Art Limited** on this.....^{13th}.....day of.....June....., 2023.

Name: AATESH SACHDEV

Signature:  22/6/2023

Designation: DIRECTOR

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(Official Stamp)

(This Order is issued in duplicate. Sign both copies and retain your copy while the other copy is to be returned to the Authority to authenticate due service of the Order.)