

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

MISC.COMMERCIAL APPLICATION NO. 1274 OF 2026

REFERENCE NO. 202601201000001274

BARRETTO HAULIERS

TANZANIA LIMITED..... APPLICANT

VERSUS

TATA AFRICA HOLDINGS

TANZANIA LIMITED..... RESPONDENT

RULING

Date of last Order: 21/04/2026

Date of Ruling: 22/05/2026

GONZI, J.

The Applicant filed this application seeking restitution of nine motor vehicles from the Respondent which were sold by the Respondent in execution of a decree of this court was subsequently set aside by the Court of Appeal. In response, among others, the Respondent raised a preliminary Objection on a point of law that:

**1. That the suit at hand is bad in law for violating
and infringing the mandatory provisions of rule
19(1) of the High Court Commercial Division)
Procedures Rules, 2019 Government Notice
250.**

With leave of the Court, the preliminary objection was disposed on by way of written submissions. The Respondent was represented by Mr. Richard Magaigwa, Learned Advocate. The Applicant was represented by Mr. Benedict Bahati Bagiliye, Learned Advocate. I thank both Learned Counsel for their submissions.

Mr. Magaigwa, Learned Advocate, submitted in support of the preliminary Objection by arguing that pleadings filed before this Honourable court must conform and comply with the pre-requisite conditions, style and design established by rule 19(1) of the High Court (Commercial Division) procedures Rules, 2019, Government Notice 250 of 2012 whereby the law demands that the pleading be in paragraphs, Times New Roman as Font type, Twelve (12) as font size and line spacing 1.5 and not otherwise.

Mr. Magaigwa, Learned Advocate, submitted that the consequences of infringement of the said rule amounts to violation of the rules and warrants the striking out of the suit as per the provisions of *rule 19(1) of the High Court Commercial Division) Procedures Rules, 2019 Government Notice 250*.

Mr. Magaigwa, Learned Advocate, referred the Court to the case of **Erenest Nduta Nyororo vs National Bank of Commerce Limited and Alexander Forbes Tanzania Limited** decided by the High Court of Tanzania (Commercial Division) at Mwanza in Commercial case No. 1 of 2015 whereby it was held that:

"The current position has it that such a pleading be it a plaint or WSD, must be rejected if not complying with the said rule. As I intimated, the consequences are as if no pleading was filed. This automatically removes that particular pleading from the court record"

Mr. Magaigwa, Learned Advocate, also, referred this court to the case of **AKM Glitters Co. Limited vs Rural Livelihood Development**

Programme, decided by the High Court of Tanzania (Commercial Division) at Dar es salaam in Commercial Case No.101 of 2015 at page 5 where the court held that:

However, the fact that the plaint was not rejected at the time of filing, this is not a ticket for the court to allow an ailment to go into the proceedings, as the ailment sailed through without being noticed, this court will cure the oversight by striking the plaint out.

Mr. Magaigwa, Learned Advocate, submitted that the word used in the rule is "shall" and that under section 54 (2) of the Interpretation of Laws Act CAP 1 (R:E 2023) where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed. Mr. Magaigwa, Learned Advocate, prayed that the application be struck out with costs for non-compliance with the rule.

Mr. Benedict Bahati Bagiliye, Learned Advocate, made reply submissions. in his submissions, he submitted that indeed the application is written in Tahoma Font 12 hence contrary to the specifications under Rule

19 of the Commercial Court Rules. However, Mr. Bagiliye, Learned Advocate, was of the view that the same should not be struck out as non-compliance with that rule was not meant to attract any sanction.

Mr. Bagiliye, Learned Advocate, submitted that the respondent has not pointed out anywhere in her submission in chief that the use of Tahoma Font 12 instead of Times New Roman Font 12 has occasioned any injustice or Prejudice to the respondent. He argued that the intent of the provision said to have been violated was to have the pleadings readable clearly. He reasoned that the use of Tahoma Font 12 is also clear and well readable even clearer than Times New Roman. He added that he has been using Tahoma Font 12 in all his pleadings be it in this court or the Court of Appeal without any objection for it meets the intended purpose of being clear and readable.

Mr. Bagiliye, Learned Advocate, submitted that in the case of **Arcopar (O.M) S.A vs Harbert Marwa and Family, Civil Application** No.94 of 2013 [2015] TZCA 554 (3 February 2015), at pages 9-10, the Court of Appeal held that the words “may or shall” in any written law, may not necessarily mean what they directed to mean in section 53(2) of the

Interpretation of Laws Act if there are express provisions to the contrary in the particular Act; applying that wording would be inconsistent with the intent and object of the written law or in the case of a subsidiary legislation, applying such interpretation would be inconsistent with the intent and object of the Principal law.

Mr. Bagiliye, Learned Advocate, submitted that Rule 19(1) of the Commercial Court Rules is inconsistent with the intent and object of the Principal Law which is the Civil Procedure Code where the Overriding Objective Principle seeks to achieve substantive justice not otherwise unless the violation goes to the very root of the powers of the Court to deny it jurisdiction to proceed with the matter, which is not the case herein.

Mr. Bagiliye, Learned Advocate, also, cited the cases of **Mwaitenda Ahobokile Michael vs. Interchick Company Ltd**, Civil Application No.218 of 2016, [2016] TZCA 2055 (13 December 2016) and **Praygod Mbaga vs. Christina Raja L. Iteba & Another**, Civil Appeal No. 179 of 2021 [2025] TZCA 628 (25TH June, 2025). He insisted that justice can only be done in substance and not by impeding it with mere technical procedural irregularities that occasion no miscarriage of justice.

Mr. Bagiliye, Learned Advocate, prayed that the raised preliminary objection should be overruled for want of merits as the respondent has not suffered any injustice neither said to have been prejudiced by the use of Tahoma Font 12 instead of Times New Roman.

By way of rejoinder, Mr. Magaigwa, Learned Advocate, submitted that the Applicant has admitted to have violated the mandatory procedural requirement by filling pleadings that are not in Times New Roman Font and space design contrary to the law, specifically Rule 19(1) of Commercial Court Rules of Procedures. He submitted that the Applicant has taken refuge to overriding objective rule but that the Overriding objective principles do not operate to sanitize clear and deliberate non-compliance with mandatory rules of procedure. He insisted that non-compliance with Rule 19(1) of Commercial Court Rules renders the application incurably defective because the rule does not provide any exception.

Mr. Magaigwa, Learned Advocate, referred the court to the case of **GA Insurance Tanzania Limited vs Milembé Construction Company Limited and 2 others**, decided by the High Court of Tanzania (Commercial Case No. 30960) of 2025, at Dar es salaam where the court held that non-

compliance with rule 19(1) of the Commercial Court Rules renders the plaint incurably defective and that Rule 19(1) does not provide any exception. He reiterated his submissions in chief and the prayer made. That marked the end of the rival submissions. I will now determine the preliminary Objection.

First, it is apparent, that the Applicant has conceded that he has not complied with the prescribed format of pleadings as provided under Rule 19(1) of the Commercial Court Rules. He has not disputed that. He has only attempted to justify his flouting the Rules in preference of his own font type, size and line spacing. The preference by Learned Counsel for the Applicant is personal. It cannot be taken as an SI unit that an ideal document should be written in the font type, size and line spacing preferred by the Applicant. The Rules were made to be followed. The Applicant has not complied with the Rules, thus the preliminary Objection is hereby sustained with costs.

As for the sanction for non-compliance with Rule 19 of the Commercial Court Rules, regarding font type, font size and line spacing in documents filed in this court, I stand guided by decision in the case of **GG REFINERY LIMITED vs RO WATER SA (PTY) LIMITED** [2024] TZHCComD 191 (TANZLII) where this Court explained the implication of rule 66(2) and 19(2) of the Commercial Court Rules as amended. I subscribe to the holding that

non-compliance with the page-limit rules, font type and size as well as line spacing does not automatically warrant expungement of the offending documents or striking out of the matter. The appropriate remedy is rejection of the offending document at the time of filing it and, where it is filed undetected, there should be an opportunity for rectification with or without an order as to costs.

Therefore, whereas I uphold the preliminary Objection with costs in favour of the Respondent, I make an order for amendment by the Applicant of his Application documents to make them compliant with Rule 19 of the Commercial Court Rules. The amendment should be done within 7 days from the date of this Ruling. It is so ordered.


A.H.GONZI
JUDGE

22/05/2026

Ruling is delivered in court this 22nd day of May, 2026 in the presence of Mr. Benedict Bagiliye, Advocate for the Plaintiff, and Mr. Antipas Lakam, Advocate for the Defendant.


A.H.GONZI

JUDGE
22/05/2026