



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCC NO. E 409 OF 2018

SAFARICOM PLC.....PLAINTIFF

-VERSUS-

IPHONE GLOBAL SYSTEMS LIMITED.....DEFENDANT

JUDGMENT

1. The plaintiff herein Safaricom PLC, sued the defendants through the plaint dated 30th November 2018 in which it sought the following orders:

a) The defendant be ordered to pay the plaintiff one million two hundred and forty six thousand six hundred and ninety four united states Dollars and Forty one cents (USD 1,246,694.41) being the amount owed to the plaintiff from the interconnection services offered by the plaintiff to the defendant.

b) Interest on (a) above at court rates.

c) General damages.

d) Costs of this suit.

e) Any other relief that this Honourable court will deem fair and just to grant.

2. The defendant did not enter any appearance despite service of summons to enter appearance and plaintiff thereby precipitating the filing of a request for interlocutory judgment for UDS 1, 246, 694.41 on 12th February 2019.

3. Interlocutory judgment was thereafter entered against the defendants on 18th February 2019 after which the case was listed for formal proof. During the hearing on formal proof, M/S Juliet Munoru, from the plaintiff's Credit and Collections Department testified that the plaintiff engaged the defendant as partners in a carrier on interconnection product in which each of the parties would charge the other a fee for the use of their networks and that as at March 2018, the defendant was in a more payable position to the tune of USD 1, 246, 694.41 which the defendant did not pay despite several reminders and demands thereby precipitating the filing of this suit.

4. She further testified that they later realized that the defendant had vacated their offices and sold of their company to a third party without settling the amount due to the plaintiff thereby frustrating the plaintiff's attempts to recover the debt.

5. Apart from the claim for the sum the plaintiff of USD 1, 246, 694.41, the plaintiff also claims general damaged for breach of contract.

6. The issue for determination therefore is whether the plaintiff has made out a case for the granting an award of general damages.

7. I note that courts have severally expressed themselves on the issue of award of general damages for breach of contract as follows;

8. In the case of the **Speed Wall Building Technologies Ltd vs County Government of Migori, [2016]eKLR** it was held;

“23 The general principle in award of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This is principle is encapsulated in the Latin Phrase restitution in integrum (see Kenya Industrial Estates Ltd v Lee Enterprises Ltd NRB CA Civil Appeal No. 54 of 2004[2009] e KLR, Kenya Breweries Ltd v Natex Distributors Ltd Milimani HCCC No. 704 of 2000 [2004] e

KLR) The case of Hadley v Baxendale [1854] 9. Exch.341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see Standard Chartered Bank Limited v Intercom Services Ltd & Others NRB CA Civil Appeal No. 37 of 2003 [2004] eKLR.”

9. In the case of **Hort Limited –vs- Attorney General [2016] e KLR**, the court awarded kshs 5,000,000 general damages and held thus:

“Damages are pecuniary recompense given by process of law to a person for the actionable wrong that another has done to him.”

96. Having established an actionable wrong by the defendant as against plaintiff, it then follows that the plaintiff is entitled to recompense for the damage, loss or injury that it suffered. In the case of Stroms versus Hutchinson [1905] AC 515 it was held that general damages are such as the law will presume to be the direct, natural or probable consequence of the act complained of.

97. To add to this, it is noteworthy that general damages are compensatory in nature in that they should offer some satisfaction to the injured plaintiff. Given the totality of evidence in this case and the fact that the plaintiff was able to illustrate that there was breach of contract due to the conduct of the defendant, I am of the opinion that the award of Kshs 5,000,000/- would be sufficient as an award for general damages to adequately compensate the plaintiff for the breach of the lease agreement.”

10. In the instant case, I find that the plaintiff has made out a case for the award of general damages for breach of contract. The plaintiff proved that the defendant breached the terms of their agreement and even vacated its business premises in a bid to escape its liability to the plaintiff.

11. I find that the actions/conduct of the defendant were deliberate and portray it as a dishonest party who did not care to inform the plaintiff of its decision to sell off the company to a different entity.

12. For the above reasons, I find that the claim for general damages is merited and I allow it and proceed to award the plaintiff the sum of kshs 20 million general damages with interest till payment in full.

13. In conclusion, and having noted that interlocutory judgment had already been entered for the plaintiff herein for USD 1,246,694.41 I make final order as follows:

a. The defendant be ordered to pay the plaintiff one million two hundred and forty six thousand six hundred and ninety four united states Dollars and Forty one cents (USD 1,246,694.41) being the amount owed to the plaintiff from the interconnection services offered by the plaintiff to the defendant.

b. General damages of kshs 20,000,000.

c. Costs of this suit.

d. Interest on a, b and c above at court rates.

Dated, signed and delivered in open court at Nairobi this 30th day of April 2019.

W. A. OKWANY

JUDGE

In the presence of:

Mr Gitau for the plaintiff

No appearance for the defendant

Court Assistant - Ali