

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

Civil Case 123 of 2005

TELKOM KENYA LTD.....PLAINTIFF

VERSUS

ALPHANET COMMUNICATIONS LTD.....DEFENDANT

J U D G M E N T

When this case came up for hearing on 14th July 2005 the defendant, who had been served, failed to attend, and the case proceeded by way of formal proof.

P w 1, JAMES MURATHA said that he is employed by the plaintiff, as a manager in charge of data services, billing and payments. He said that the plaintiff provides Internet services, to the defendant at the defendant's request. That the defendant applied for, those services by applications dated 17.8.1998 and 15.4.1998. The application was made to Kenya Post Telecommunication as it was at that time. Both the applications were signed by Stephen Muli, one of the directors of the defendant company. The defendant company as well as filing in the application form supplied the directors identity card, the defendant company pin number the defendant's certificate of incorporation. The plaintiff thereafter issued the defenant with a licence.

In 1999 P w 1 said that Kenya Post and telecommunication was split into three entities, (1) Communication Commission of Kenya; (2) Postal Corporation; and (3) Telkom Kenya. The latter inherited all the provisions of telecommunication services, after the split. He said that it is Telkom Kenya that gives access to international gateway, through the Jambo net. The defendant got that service, with the intention of selling to other small consumers. The record of payment, by the defendant, of those services was not good, and they were frequently disconnected, but were terminally disconnected in November 2004. P w 1 produced statements showing the defendant's account and reflecting as at March 2005 the amount of kshs 7, 919, 430 but he indicated that the amount sued for was kshs 7, 769, 444. 95. He indicated that entry of that amount, in the statements exhibited. Pw 1 then produced letters written by the defendant requesting for reconnection, and for payment by instalments, of the amount due. P w1 then asked that judgment be entered as prayed.

I have considered the oral evidence of P w 1, the exhibits produced, in support of the plaintiff's case and I find that the plaintiff has proved its case on a balance of probability.

I therefore enter judgment for the plaintiff as prayed in the plaint.

Dated and delivered this 18th day of August 2005.

MARY KASANGO

JUDGE