

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

**(CORAM: ODOKI, C.J., ODER, KAROKORA, MULENGA,
KANYEIHAMBA, JJ.S.C.)**

CIVIL APPEAL NO. 13 OF 2004

BETWEEN

M.T.N (U) Ltd ::::::::::::::::::::::::::::::::::: APPELLANT

AND

UGANDA TELECOM LTD. ::::::::::::::::::::::::::: RESPONDENT

[Appeal from the judgment and orders of the Court of Appeal, (Okello, Twinomujuni, Kitumba, J.J.A) dated 1st September, 2004, in Civil Appeal No.49 of 2003].

JUDGMENT OF KANYEIHAMBA. J.S.C

This is a second appeal from the judgment and orders of the Court of Appeal, holding that interest owed by the respondent to the appellant on undisputed principal debt was at shs. 518,455,167 as held by the High Court, but shs. 200,552,609 as contended by the respondent.

The brief background to this appeal may be stated as follows: Both the Appellant and Respondent are parties to an interconnection agreement. Each party is entitled to charge the other for interconnection services rendered through their respective telecommunication systems. The Appellant sued the Respondent seeking to recover the sum of Shs. 5, 772,690,167 as principal and interest

amounting to Shs. 518,455,167 which it claimed was the interest that had accrued from the date it was due and as a result of failure by the Respondent to pay the principal sum on the due date. The parties were in agreement as to the principal sum owed by the Respondent. Consequently, judgment for the principal sum of Shs. 5,772,690,167 in favour of the appellant was entered by the learned trial judge with consent of the two parties. The learned judge was then asked to make a ruling as to the amount of interest owed because the parties had failed to agree on it. She awarded the sum of Shs. 518,455,167. The difference between the parties is the date when the interest began to accrue. The determination of that date resolves the question of quantum of interest due from the respondent to the appellant.

I agree with the learned Justice of Appeal, Kitumba, J.A; who wrote the lead judgment of the Court of Appeal when she observes that the court must construe that contract as it is written. I also agree with her that the operative part of the interconnection agreement between the parties is Article 7 of the agreement which provides in clause 7.1.1 that:

"Each party shall send the other a report of the amount due for all traffic completed by its telecommunications system for termination on or through the other party's telecommunications system at the end of every calendar month."

The determination of the amount due shall include:

- (a) _____
- (b) ***The value of such traffic, broken down by type of traffic and calculated at the individual accounting rates agreed to between the parties. Each operator should measure***

the traffic crossing the point of interconnection based on the number of calls and minutes by time band.

(c) ***A party receiving the traffic data shall have 15 days in which to reconcile, accept or refuse any of the traffic. It no complaint is raised within 15 days, then the same shall be deemed accepted by the other party.***

(d) ***An invoice shall be issued upon acceptance of traffic reconciliation.***

Mr. Oscar Kambona for the **A**ppellant contended that the due date for the payment of the principal and interest was the date immediately after the expiry of forty five days following the receipt of the traffic reports by either party. He contended that both the surrounding circumstances of this particular agreement and business efficacy dictate this construction of the agreement to be the only reasonable one. He cited **Halsbury's Laws of England, the Uganda Communications Act, Cap. 106, Stirnlaw v. Southern Foundaries (1926) Ltd and another (1939) Acc.E.R.113** as authorities in support of his submissions.

For the Respondent, Mr. Nkurunziza opposed the appeal and supported the judgment of the Court of Appeal. He contended that under Article 7 of the agreement liability to pay interest arises only after the conditions to pay have been fulfilled. In his submission, the final condition which gives rise to liability is when the net amounts between the parties have been agreed and the party claiming the net amount has issued an invoice for that amount. In Mr. Nkurunziza's view, the agreement is silent on the situation that could arise if the parties do not agree as to what is the net amount within the stipulated forty five days.

In my opinion however, the agreement makes provision beyond the forty five days' period. For instance, Article 7.1.3 to 7.3 provides:

"7.1.3. Any payments not made by the due date shall bear Interest in favour of the party to whom the payment is due at a rate equal to ten percent (10%) per annum, from the due date until the date of payment.

7.2. If either party discovers an error in the reports, it shall promptly notify the other party and the parties shall make such adjustments in the reports and in the payments as are necessary to correct the error.

7.3. If the parties dispute the accuracy of the reports on any related matter concerning the net amount payable pursuant to this Article 7, the parties shall jointly select an independent auditor to review the reports and assist in resolving the dispute. If the parties are unable to agree on the appointment of an independent auditor, the Commission or its delegate shall appoint an independent auditor. The cost of such an auditor shall be borne jointly by the parties."

It is quite clear that the agreement anticipates a series of events and procedures that are likely to stretch to unspecified periods of time in the future. It envisages disputes on the amounts to be finally paid to a degree that requires the intervention of an auditor and even of the Commission. The only date which signifies total and final agreement is when the party in credit finally sends the other party an **invoice** which shall signify acceptance by both parties of the traffic reconciliation.

I am therefore in agreement with Kitumba, J.A; when in her judgment she says;

"it would be impossible, in my view, for one to remit the net amount invoiced before the due date when no invoice has been issued. Issuing of the invoice specifying the amount to be paid is a condition precedent to remitting the amount."

In my view, it is the date when the **invoice is received** that becomes the due date and it is the same date also when the interest on the principal sum begins to accrue.

In the result, I would dismiss this appeal with costs to the respondent. The respondent is only liable to pay to the appellant Shs. 200,552,609 with interest at court rate from the date of this judgment till payment in full. As I will observe shortly, costs in this matter shall be based solely on the amount of interest disputed.

Before resolving the matter of costs, I am constrained to observe that after the parties settled out of court their respective liabilities with regard to the principal sum owed, only one small and simple issue remained, that is, the date when interest on the agreed amount started accruing. I have failed to understand why counsel for the parties did not confine themselves to what was pertinently relevant to the issue. In my opinion, the volumes of materials included in the record of proceedings by counsel were absolutely unnecessary.

I would order that the subject matter upon which taxation for costs is to be based is the interest sum that was in dispute before this court and in the courts below.

JUDGMENT OF ODOKI, CJ.

I have had the advantage of reading in draft the judgment prepared by my learned brother, Kanyiehamba, JSC. I agree with him that this appeal should be dismissed with costs here and the Courts below.

As the other members of the Court also agree, this appeal is dismissed with costs here and the Courts below.

JUDGEMENT OF ODER, JJSC

I have had the benefit of reading in draft the judgment of my learned brother: Kanyeihamba, JSC. I agree with him that the appeal should be dismissed with costs to the respondent. I also agree with the orders proposed by him.

JUDGMENT OF KAROKORA, JSC:

I have had the benefit of reading in draft the judgment prepared by my learned brother, Kanyeihamba, JSC. I agree with him that this appeal should be dismissed with costs here and in the courts below.

JUDGMENT OF MULENGA, JSC

I have had the advantage of reading in draft the judgment prepared by my learned brother, Kanyeihamba, JSC. I agree with him that this appeal should be dismissed with costs here and the Courts below.