

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO.57 OF 2003

SALIM NAJIB t/a SILVERLINE
PAYPHONE AND SEC. SERVICES.....PLAINTIFF

VERSUS

1.TANZANIA TELECOMMUNICATIONS
COMPANY LIMITED

2.THE PRESIDENTIAL PARASTATAL
REFORMS SECTOR COMMISSION

.....DEFENDANTS

Counsel: Mr. Rugeimukamu for the Plaintiff
Mr. Living for the Defendants

J U D G M E N T

BWANA, J.

The plaintiff is a Mwanza based businessman and owner of Silverline Payphone and Secretarial Services. The first defendant – the TTCL – is a limited liability company dealing in inter alia, installation of telephone services. The second defendant – PSRC – is being sued as a necessary party, by virtue of the Public Corporations Act, 1992, and GN 543 of 1997.

The Plaintiff is claiming from the defendants jointly and/or severally for shs.25m/- as special damages and general damages to the tune of shs.5m/- plus interests and costs of this suit. He is also claiming shs.418,000/ from the defendants being telephone installation charges.

The facts of this case may be summarized as follows. The plaintiff applied for four telephone lines from the first defendant. The said lines were to be installed in the offices of the plaintiff at Mwanza hotel. It is not in dispute that they were installed and the plaintiff paid the sum of shs.418,000/- as installation fees deposit and other charges (Exh P1). Apparently the plaintiff had intended to use the four telephone lines for commercial purposes. According to his business plan (Exh P2) the plaintiff expected to realize shs.9m/- annually as net profit.

It is now claimed by the Plaintiff that the four lines were never installed and as such, they never functioned. Together with that failure, it is alleged by the plaintiff that he was billed by TTCL bills which he declined to pay as the four lines did not deliver the services expected. Failure to do so by the plaintiff the first defendant at first applied the TOS (Temporary Out of Service) strategy aimed at reminding the customer to settle his bills. When this failed to yield the expected results, the first defendant eventually ceased the services of all the four lines.

Initially the four lines were given through the address of Salim Najib. But some months later, the said Salim applied for change of address to Silverline Payphones and Secretarial Services – a change which was approved by the first defendant.

It is the defence case that the four lines had been applied for office use and not for commercial use. It is averred by Juma Swalehe Ng'imba – DW 1- the TTCL Mwanza Network Control Officer – that there are three categories of telephone services. The first one is for home use. The second one is for office use and the third one and which is relevant to this case, is for commercial use. The terms and conditions for installing the three categories differ, with the last one being the most

expensive and involving a long procedure. In so far as the third category is concerned, both DW1 and DW2 (Rashidi Mwangoka, a TTCL Sales Manager, Lake Zone) state that a customer who wants to install a telephone line for commercial purposes (pay telephones) he has first to apply for the same. Then a committee of three TTCL personnel team is sent to inspect the commercial premises. Upon the approval by the team, a customer has to sign an Agreement with TTCL, deposit shs. 2m/- and obtain a valid licence from the Municipal Council. Once all that is complied with, TTCL issues a licence. All that procedure is shown in Exhs. D2 and D3.

It is the defence case that the plaintiff never complied with all those terms and conditions. The plaintiff does not deny this clear averment by the defence case but claims that he was not informed by TTCL of those terms and conditions. Having not applied (and obtained) the 3rd category of phone services, the plaintiff therefore, could not use the four lines for commercial purposes, as he claims, since they had been installed for office use.

As regards the bills the plaintiff got from TTCL, it is the defence case that bills could be sent for rental purposes even if the relevant telephone was not used to phone out. That is what occurred with some of those four lines. After the ceasure, any bills sent to a customer should be ignored, so it is said by DW1 and DW2.

The following issues were framed for the determination of this court:-

1. Whether there was a contract between the plaintiff and the first defendant for the plaintiff to carry out pay phone services.
2. If No. (1) is in the affirmative, whether the defendant breached the said agreement.

3. What relief, if any, are the parties entitled.

Before I discuss the above three issues it is important to note the following uncontroverted facts. First, is that the plaintiff applied for and got four telephone lines installed in his Mwanza Hotel based office. Second, that although the first defendant sent bills to the plaintiff, the latter never paid. Lastly, due to the failure to pay, the first defendant eventually ceased all the lines hence terminating the parties relationship.

The issue now for immediate determination is: under which category of telephone usage were the four lines installed? The plaintiff claims that the four lines were intended for commercial usage, hence the name "Silverline Payphone..." The defendants dispute that. They state that a customer's name has nothing to do with the "category". They state further that in fact the plaintiff changed his address from Salim Najib to Silverline Payphones and Secretarial Services well after the four lines had been installed. They emphasize that the change of address by the plaintiff had nothing to do with the change of the category. I have carefully considered this issue and came to the conclusion that what is stated by the first defendant is correct. It is the uncontroverted evidence of both DW1 and DW2 that there are three categories of telephone customers – for home use; for office use; and for commercial use. The process for applying and obtaining a telephone line from the first defendant differs. The issue in controversy herein concerns the commercial use aspect. The procedure for obtaining telephone lines for commercial use has been analysed above. The plaintiff admits not to have complied with that procedure. He claims that he was not told by the first defendant what to do. It is clear therefore that the four telephone lines installed at the plaintiff's office were not meant for commercial use since first the plaintiff had not applied and never followed the procedure required for that category; then there was no contract existing between the two parties covering a commercial category. What is in evidence is that the contractual relationship that existed was for

the installation and use of office telephone lines. As such, there was no contract between the plaintiff and first defendant for the plaintiff to carry out payphone services, known as "private attended call services".

The above having been decided in the negative, the second framed issue also fails. There can be no breach of a contract which never existed. The plaintiff prays for both special damages and general damages. For the former, he claims for the sum of shs.25m/- which would have been realized through the use of payphone services business from the date when the four telephone lines would have been installed to date, at the rate of shs.9,166,606/- per year. As stated above, since there was no contract between the parties governing the private attended call services, there can be no claim for special damages.

In so far as general damages are concerned, the plaintiff claims to have suffered humiliation and embarrassment of receiving bills for which no service was provided. He claims 5m/-. The plaintiff had applied for office lines. If he advertised himself (as the change of name connotes) as starting private attended call services that was to his own peril. As stated above, the change of his address did not automatically change the category of the four telephone lines. He still had to comply with another vigorous procedure as provided by the first defendant. He admits not to have done so. He cannot therefore successfully claim under this head.

The plaintiff also claims for the refund of shs.418,000/- being telephone installation charges. I have carefully considered the evidence of DW1 and DW2. It is evident that telephone bills could not be sent to a customer before he has signed a contract and the telephone line installed. Further it is shown by Exh D4 that telephone No.42043 for instance, was still operational, receiving a number of

"untimed calls". The first defendant had the right to charge for the 418,000/- as deposit and installation fees. It cannot therefore be refunded as claimed by the plaintiff.

All in all, the plaintiff's case is dismissed in its entirety, with costs.

Sgd: Dr. S. J. Bwana

JUDGE

5/7/2004

Court: Judgment delivered.

Sgd: Dr. S. J. Bwana

JUDGE

5/7/2004

I Certify that this is a true and correct
of the original order Judgement Rulling
Sign Mr. M. M. M. M.
Registrar Commercial Court Dsm.
Date 6/7/04