

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 63 OF 2021

AIRTEL TANZANIA PUBLIC LIMITED COMPANY.....PLAINTIFF

VERSUS

SMILE COMMUNICATIONS TANZANIA LIMITED.....DEFENDANT

JUDGMENT

K. T. R. Mteule, J

The appellant **Airtel Tanzania Public Limited Company** sued the Defendant, **Smile Communication Tanzania Limited** claiming for payment of USD 1,055,957.50 being unpaid rentals for site access availability granted between the period of 1st April 2019 and 3rd February 2021. The plaintiff's prayers were:-

- i. Declaration that the defendant is in breach of its payment obligations to the plaintiff.
- ii. Ordering the defendant to pay the plaintiff USD 1,055,957 on account of outstanding rental fees for site Access Availability granted between 1st April 2019 and 3rd February 2021.
- iii. Interest on the sum of USD 1,055,957 at commercial rate of 9% per annum from the date of filing this plaint until the date of judgment.

- iv. Interest on the decretal sum at court's rate of 7% per annum from the date of judgment until payment in full.
- v. Costs of this suit.
- vi. Any other or further relief(s) as this honourable Court may deem just to grant.

The Defendant filed Written Statement of Defence but before the matter proceeded to hearing, parties engaged in negotiation and asked for the Court to provide such an opportunity to settle the matter out of Court. The prayer to settle out of Court was granted and as a result of the negotiations, parties agreed on some terms and conditions which were reduced into a settlement deed filed in Court on 10th August, 2021. The terms and conditions were as follows:-

- i. Upon the signing of this settlement Agreement, Smile shall pay Airtel the sum of US\$ 500,000 (VAT inclusive) being full and final settlement of all the outstanding amount payable by Smile to Airtel up until the date of switching on of Smile's equipment. The amount shall be paid within a period of not more than seven (7) days from the date of signing this agreement.
- ii. Both parties acknowledge that the amount mentioned under clause 1 above once paid shall be final and conclusive settlement of the two disputes between them that is, Commercial Case No. 63 of 2021 and Commercial Case No. 64 of 2021.



- iii. For the avoidance of doubt, it is agreed that Airtel shall not charge Smile for the period their equipments were switched off and all invoices issued for this period shall be considered cancelled immediately upon signing of this settlement Agreement.
- iv. The parties shall sign a new lease for the 14 sites covering a period of at least twelve (12) months with a three (3) months' notice of termination. Circumstances upon which termination shall occur shall be detailed in the new lease.
- v. Under the new lease, Airtel shall charge Smile US\$ 1,200 per site per month (VAT inclusive). In this new lease, rent payment shall be made in advance by the 5th day of the month and in case of non-receipt of the payment, Airtel may at its liberty switch off the sites from the 10th day of the particular month.
- vi. In case the first month of restoration of services has commenced, payment in advance will be prorated for days those services are enjoyed in that month only, otherwise the billing shall be for a full month cycle starting on the 1st day of the month.
- vii. In the event of any overdue amount from Smile, Airtel shall be entitled to hold in lien Smile's equipment of value equivalent to the outstanding sums, this being the only recourse to ensure recovery of any claim on the unpaid rental fees.
- viii. Upon signing of this settlement Agreement and payment of all the agreed sums, Airtel shall immediately allow access and switch on all of Smile's equipment on the 14 sites.
- ix. Each of the parties undertake to take all steps necessary for its implementation and to sign or to have signed from time to time all other documents, contracts or writings and to do, or to see that there is done,

all that which is considered necessary in order to fulfil the object of this settlement Agreement and in order to give full effect to all of its provisions.

- x. There shall be no case whatsoever whether criminal or Civil between the same parties in relation to the said equipments again.
- xi. Each party shall carry its own costs in relation to the two suits.
- xii. Upon being signed and filed in court, this Settlement Agreement shall be recorded and reduced into a court decree and shall be enforceable and binding on the parties and capable of being executed in the same manner as any other decree of the court.

On this date of 10th Day of August, 2021 parties asked the Court to adopt the settlement Deed as Judgment and decree of the Court and the prayer is granted.

Consequently, since parties have decided to amicably settle the matter, I hereby pronounce Judgment as per the terms and conditions set out in the settlement deed and accordingly the matter is marked settled. It is so ordered.

Dated at Dar es Salaam this 10th Day of August, 2021



KATARINA T. R. MTEULE

JUDGE

10/08/2021

