

186

REPUBLIC OF TRINIDAD AND TOBAGO
TRINIDAD
MAGISTRACY
ST. GEORGE WEST

Case No: 12403/09

IN THE MATTER OF THE APPEAL OF:

NOELLA NOEL

APPELLANT/DEFENDANT

VERSUS

DENZEL ALI

RESPONDENT/COMPLAINT

FOR

**Did provide a public telecommunications service
Without a concession as required by the
Telecommunications Act.**

1. The matter in question involves the charge of providing a public telecommunication service without a concession. The said charge was laid against the Defendant Noella Noel by Denzil Ali, Telecommunications Inspector of the Telecommunications Authority of Trinidad and Tobago.

The Case

- 2. The case for the prosecution was that the Defendant trading as Ky Kay Marketing, provided an unlicensed telecommunications service to the public during the period March 2009 to May 2009 thereby contravening section 65 of the **Telecommunications Act Chap. 47:31** (the Act). The particulars of which are that the Defendant provided to Mr. Ali (the Complainant) paid access to the Weefone Voice Over Internet Protocol (VOIP) Calling Service. By use of this service the Complainant was able to and did make several international calls during the aforementioned period.
- 3. The Defence led no evidence in this matter.

The Issues

- a) Was the Weefone Service a Telecommunications Service?
- b) Was the Defendant involved in the provision of this service?
- c) Did the Defendant have a concession validly obtained from the Telecommunications Authority to provide such a service?

Facts not in Dispute

- 4. The following evidence remained unchallenged at the end of cross-examination of the Prosecution’s witnesses by Counsel for the Defendant.
 - i. That the Office located at No. 54 Maraval Road, Port-of- Spain was the business address of Ky Kay Marketing;
 - ii. That Republic Bank Account No. 320 465 647 231 was owned by Noella Noel trading as Ky Kay Marketing;
 - iii. That Noella Noel had formally registered the business name Ky Kay Marketing as her own; and
 - iv. That Ky Kay Marketing continued to be the registered business name of the Defendant at all material times.

The Evidence

The initial contact

- 5. Acting upon instructions, the Complainant initiated his investigation into Ky Kay Marketing and the Weefone Service. Among other things done, the Complainant logged onto the Weefone website where he obtained a contact number. Upon calling the number the person on the other end of the call identified himself/herself as Noella Noel and gave him information on how to access the service.
- 6. The Court was of the view that this evidence could not be used by the Complainant for the truth of it.
- 7. Same was allowed as a declaration of the state of mind of the Complainant and as evidence of the basis upon which he conducted further investigations into Ky Kay Marketing.

The Visit

- 8. The Complainant next gave evidence of visiting the office of Ky Kay Marketing at 54 Maraval Road, Port of Spain on the 27th of November, 2008 where he signed a written contract and paid \$300.00 to Ms. Britney Mohammed. In return he received a receipt (DA1), a handwritten document containing a Weefone username and password as well as a Republic Bank account number (DA2) and a Compact Disc (DA3).

The Calls

- 9. The Complainant next gave evidence of successfully accessing the Weefone Service using the information provided to him at the office of Ky Kay Marketing. He described loading the Weefone software contained in DA3 onto his office computer using the instructions given to him. This allowed him to log onto the Weefone Service via the username and password provided to him on DA2. Finally he recounted making several international calls using the Weefone Software during the months of March and April 2009.

The 'Top-Up'

- 10. After expending the entire 300 minutes of Weefone Service purchased at Ky Kay Marketing, the Complainant chose to 'top-up' his Weefone account. He described to the court that this was done by depositing one hundred dollars into the Republic

Bank Account listed on DA2. He also recounted obtaining a Bank slip (DA4) upon making the deposit.

- 11. The Defendant's bank records (TC1), were tendered into evidence through Ms. Tanisha Caribi, Head Teller of Republic Bank, San Juan Branch. It revealed that the Account into which the Complainant deposited the sum of \$100 belonged to the Defendant trading as Ky Kay Marketing.

The Name

- 12. Via the Complainant, the Prosecution produced documents from the Companies Registry of Trinidad and Tobago (DA5) indicating that Ky Kay Marketing was the registered business name of the Defendant at all material times.

Assessment of the Evidence Produced

Inconsistencies and plausibility

- 13. The Court found no material internal inconsistency in the evidence of the Complainant throughout his evidence in chief or the extensive cross-examination he was subjected to. The Court also found the evidence led from all other Prosecution witnesses to be plausible and reasonable. Both Ms. Moore and Ms. Caribi gave evidence which was well within their respective areas of expertise.

Bias

- 14. Allegations of collusion, fraud and evidence tampering were made against the Complainant during cross-examination. However there was no evidence before the Court that suggested that the Complainant ever knew of the Defendant's existence before the initiation of this investigation. As such there was no evidential basis upon which the Court might find that the Complainant held any bias against the Defendant or had any motive to act in bad faith in relation to her. The absence of evidence from the Defence meant that these allegations remained entirely unsubstantiated.

Compatibility of the various sources of evidence led

- 15. It is quite clear that the independent documentary evidence provided through the Republic Bank of Trinidad and Tobago as well as the Companies Registry (TC1

and DA5 respectively) fell in line with and lent credibility to the Complainant's assertion that the Defendant was intimately involved in the business operations of Ky Kay Marketing. To put it simply, the evidence of the Prosecution when put together all added up.

Response to Questioning

16. The answers of the Complainant displayed at all times calm and rational thought. He appeared willing to admit to the occasions that he did not comprehend what was being asked of him and at no time became aggressive towards the questioner.

Assessment

17. The Court having considered the aforementioned factors came to the conclusion that the evidence led from the Prosecution's witnesses was credible. The evidence led on behalf of the prosecution was therefore accepted as fact.

The Law

18. Section 2(1) of the Act defines "telecommunications" as the transmission, emission or reception of signals, writing, pulses, images, sounds or other intelligence of any kind by wire, wireless, optical or electromagnetic spectrum or by way of any other technology.

19. Section 2(1) also defines a "telecommunications service" as a service using telecommunications whereby one user can communicate with any other user in real time, regardless of the technology used to provide such a service and includes a public telecommunications service, a private telecommunications service, a closed user group service and a radio communication service;

20. Section 21(1) of the Act prohibits the operation of a public telecommunications service without a concession granted by the Minister. Section 65(a) of the Act sets out the sanctions to be imposed for an infringement of section 21(1).

Application of the facts to the Law

Was the Weefone Service a telecommunications service?

21. The facts produced through the expert evidence of the Complainant clearly indicated that the Weefone Service was a service which allowed him to communicate in real time with another person using VOIP technology.
22. During his evidence-in-chief the Complainant alluded to making several international calls routed over the internet using the Weefone Service.

Was the Defendant involved in the provision of this service?

23. The official records of the Companies Registry adduced as evidence established three incontrovertible facts:
 - i. That the Defendant made an application for registration of the business name Ky Kay Marketing on the 27th of June, 2007;
 - ii. That the business name Ky Kay Marketing was registered to the Defendant on the 18th of September, 2007; and
 - iii. That the business name Ky Kay Marketing was de-registered by the Defendant on the 1st of March, 2010.
24. These facts led the Court to the inescapable conclusion that Ky Kay Marketing was the registered business name of the Defendant during the period 18th September, 2007 to 1st March, 2010.
25. The facts accepted by the Court clearly identified the Defendant as an individual to whom money was being paid for the provision of the Weefone telecommunications service. The case for the Prosecution clearly showed that the signing of the contract for provision of the Weefone service occurred at the office of Ky Kay Marketing. The payment made by the Complainant to engage this service was made there. The hand-over of such information as was necessary to initiate use of the service also occurred at that Office.
26. The information provided to the Complainant at the Ky Kay Marketing Office allowed him to deposit the re-charge fee of \$100.00 into the Republic Bank Account set up by the Defendant for the conduct of Ky Kay Marketing business. The way in which the Account is named suggests this.
27. The Court is of the view that the word 'provide' when given its natural meaning is sufficiently wide to capture within the ambit of section 21(1) the type of

- 34. However, this Court does not accept that the evidence in question was illegally, improperly or unfairly obtained. None of the Defendant's constitutional rights were infringed upon by the actions of the Complainant nor could it be realistically argued that any of the Complainant's words or actions incited or induced the Defendant to offer telecommunication services for public consumption.
- 35. The totality of the evidence for the prosecution suggests that the Defendant was previously disposed to commit the acts complained of. As such, the Complainant's actions did not qualify as entrapment and this prosecution was not an abuse of process.
- 36. Also, the Complainant's attempt to contract for a service which he had not as yet determined to be illegal was not an action committed in breach of any law.
- 37. It is the view of this Court that the evidence obtained during the Complainant's visit to the office of Ky Kay Marketing was properly obtained.

Conclusion

38. It is the Court's view having closely considered the facts and the law in question, that the Defendant was guilty of the offence charged.

Aden Stroude
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ADEN STROUDE
MAGISTRATE.
MAGISTRATE
PORT OF SPAIN MAGISTRATES' COURT
ST GEORGE WEST MAGISTERIAL DISTRICT