



REPUBLIC OF GHANA

WRIT OF SUMMONS
(Order 2 rule 3(1))

WRIT ISSUED FROM ACCRA 1/08/2023 SUIT NO.

G/1133/2023

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION - A.D. 2023

BETWEEN

GHANA INDEPENDENT BROADCASTERS ASSOCIATION - PLAINTIFF
NO. 10
SAPELE LOOP
KOKOMLEMLE - ACCRA

VRS. - 1ST DEFENDANT

THE ATTORNEY GENERAL
MINISTRIES ACCRA

K-NET LIMITED - 2ND DEFENDANT
SILICON HOUSE
NO. 12, RIDGE STREET,
ROMAN RIDGE

(UPON WHOM PLAINTIFF SHALL DIRECT SERVICE)

To:

An ACTION having been commenced against you by the issue of this Writ by the above-named Plaintiff

GHANA INDEPENDENT BROADCASTERS ASSOCIATION

YOU ARE HEREBY COMMANDED that within EIGHT DAYS after the service of this Writ on you inclusive of the day of service you do cause an appearance to be entered for you.

- 1. THE ATTORNEY GENERAL
- 2. K-NET LIMITED

AND TAKE NOTICE that in default of your so doing, Judgment may be given in your absence without further notice to you.



AUGUST,

23
G. SACKY TORKORNOO (MRS).

NR: This writ is to be served within twelve calendar months from the date of issue unless, it is renewed within six calendar months from the date of that renewal.

The defendant may appear hereto by filing a notice of appearance either personally or by lawyer at Form 5 at the Registry of the Court of issue of the Writ. A defendant appearing personally may, if he desires, give notice of appearance by post.

❖ State name, place of residence or business address of Plaintiff if known (not P. O. Box number)

❖ State name, place of residence or business address of Defendant if known (not P. O. Box number)

HIGH COURT ACCRA

The Plaintiff's claim is for:

- a. A declaration that the decision of the Ministry of Communications and Digitalization establishing fees for Contribution Link services is null and void for want of parliamentary approval of the said fees.
- b. A declaration that the decision of the Ministry of Communications and Digitalization establishing TV Channel fees is null and void for want of parliamentary approval of the said fees.
- c. A declaration that the authority granted the 2nd Defendant to collect fees for contribution link services by the Ministry of Communications and Digitalization and to disconnect broadcasters that do not pay same is null and void.
- d. An order quashing the decision of the Ministry of Communications and Digitalization authorizing the disconnection of broadcasters from the DTT Transmissions platform on account of nonpayment of the fee charged for Contribution Link services and TV Channel fees.
- e. Any other order as the Honourable Court may deem fit.

K-ARCHY & CO. LTD.
 LEGAL CONSULTANT / NOTARY PUBLIC
 PME 14, KANDA

 Scheduled Solicitor

This Writ was issued by
 Who address for service is

KWAKU OWUSU-AGYEMANG ESQ.
K-ARCHY AND COMPANY
 (ePP00015/23)
 ATTAFAH HOUSE, NEAR KANDA CLUB 10, ACCRA
 (PRAC. LIC NO. eGAR 01337/23)

Agent for **PLAINTIFF**

Lawyer for the Plaintiff who Resides at **ACCRA**

.....
 Indorsement to be made within 3 days after service

This Writ was served by me at

On the defendant

on the _____ day of _____ 20

endorsed the _____ day of _____ 20

Signed.....

Address.....

Note: If Plaintiff's claim is for liquidated demand only, further proceedings will be stayed if within the time limited for appearance the Defendants pays the amount claimed to the Plaintiffs his, his lawyer or his agent or into court provided for Order 2 rule 3(2).

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(GENERAL JURISDICTION)
ACCRA AD – 2023

1108/23
10:15 am/pm
Registrar
HIGH COURT
ACCRA
SUIT NO:

BETWEEN

GHANA INDEPENDENT BROADCASTERS ASSOCIATION - PLAINTIFF
NO. 10
SAPELE LOOP
KOKOMLEMLE – ACCRA

VRS.

THE ATTORNEY GENERAL - 1ST DEFENDANT
MINISTRIES ACCRA

K-NET LIMITED - 2ND DEFENDANT
SILICON HOUSE
NO. 12, RIDGE STREET,
ROMAN RIDGE

(UPON WHOM PLAINTIFF SHALL DIRECT)

STATEMENT OF CLAIM

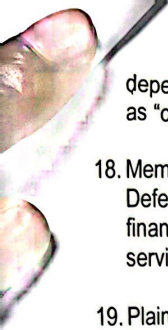
1. Plaintiff is a company registered in the Republic of Ghana and limited by guarantee which has protection of media freedoms as one of its main objectives.
2. Membership of the Plaintiff association is in the region of about 400 media and broadcasting companies which are authorized by the National Communications Authority in accordance with the laws regulating the broadcasting and media industry in Ghana.
3. 1st Defendant is the proper person to be sued by virtue of Article 88(5) of the 1992 Constitution the present matter being against the decision of the Ministry of Communications and Digitalization, a Ministry under the executive arm of Government (hereafter called the Ministry).
4. 2nd Defendant is a company incorporated under the laws of the Republic of Ghana which claims to have been contracted by the Ministry to charge and collect what it refers to as contribution link services fee in relation to the National Digital Terrestrial Television Transmissions platform.
5. In 2006, the Government of Ghana signed the Geneva 2006 (GE 06) Agreement of the International Telecommunication Union (ITU) ("the GE 06 Agreement"). The GE 06 Agreement established the Digital Terrestrial Broadcasting Bands 174-230 MHz and 470-

862 MHz at the Regional Telecommunications Conference. The essence of the agreement was to ensure that signatory countries, including Ghana, change from the old way of transmitting television broadcast signals known as analogue to a new digital technology known as Digital Terrestrial Television (DTT) by June 17, 2015. The transition from analogue to digital broadcasting is often called "Digital Migration".

6. As part of the Digital Migration process, the Government sponsored and built what is now referred to as the DTT Transmissions platform which is designed to receive, host and transmit all television content from all authorized free-to-air (FTA) broadcasters including members of the Plaintiff.
7. Plaintiff says that per the migration process all broadcasters on the DTT Transmissions platform, broadcasters who hitherto had applied for and obtained specific spectrum from the National Communications Authority (NCA) in accordance with their media rights guaranteed under the 1992 Constitution, and some of which had operated over two decades (with their own transmissions installations across the country) were demanded to cease using their assigned spectrum by the National Communications Authority (NCA) for all of them including newly authorized FTA broadcasters to be hosted on the National DTT Transmissions platform.
8. Plaintiff repeats paragraph 7 above and says that subsequently the NCA issued what is known as the Digital Replacement Authorization to all analogue FTA television broadcasters and digital terrestrial television authorization to new FTA Non-Analogue broadcasters, with specific requirements as conditions for their operations.
9. Per the conditions of Digital Broadcasting Authorizations issued by the NCA, members of the Plaintiff were required to make their programmes available in digital form to the National DTT Transmissions platform ("National Head-end at Kanda-Accra, in the Greater Accra Region of Ghana"), for which the NCA provided the relevant GPS Coordinates (a unique identifier of a precise geographic location on the earth) to aid the broadcasters in their installations. There is no condition in their respective licenses or authorizations that constitutes the Ministry of Communications and Digitalization or the 2nd Defendant as the only entity to deliver the required digital formatted programs of broadcasters to the DTT head-end, as a special activity or service.
10. Included in the process stated in paragraph 9 which the Plaintiff members holding the NCA Authorization are required to provide, is what is referred to as Contribution Link or Studio-to-Transmitter link (STL) which is the means by which the contents of broadcasters are transported or digitally made available to various transmissions stations or the location of a DTT Transmissions Platform, operating as a carrier network. STL application is a wireless technology used by content creators worldwide including broadcasters in Ghana to deliver audio, video, and data signals as well as media contents, such as live sporting activities, conferences and television programs from any production location around the world to a broadcast distribution or transmission location or head-end facility. STL installations can be achieved through the application of various digital processing techniques, including Internet

Protocol (IP) Networking over Fiber, Cellular or Telecom Data connectivity, Satellite transmission systems and Radio or Microwave links amongst others.

11. In 2016, the Government of Ghana offered, by way of support, to procure the installations of Radio Links equipment free of charge to the existing analogue broadcasters numbering about 15 stations at the time (as a crash program to kick start the operations of the newly installed DTT infrastructure) through policy interventions to cushion them from the impact of the digital migration since they (analogue broadcasters) were required to continue broadcasting the analogue signals alongside the digital until the Ministry's pronouncement of Analogue-Switch-Off (ASO).
12. After the Government's offer and support towards the installation of Microwave radio links systems for the analogue broadcasters, all non-analogue broadcasters who obtained Authorizations from the NCA were responsible for providing their own links, either through the use of digital satellite feeds or the installation of compatible digital link systems in order for them to send their program contents in digital format to the National DTT Transmissions platform (National Headend at Kanda-Accra).
13. Upon completion of the construction of the DTT Transmissions platform, the Ministry carried out the hosting of all the broadcasters on the said DTT Transmissions platform from the period of test transmissions to date.
14. Plaintiff says that since the completion of the DTT Transmissions platform, it has come to the attention of the Plaintiff and its members that the 2nd Defendant has been the company that maintains the said platform pursuant to arrangements between the Ministry and the 2nd Defendant.
15. The 2nd Defendant sometime in 2020 served notices containing fees it has charged to members of the Plaintiff and all broadcasters on the DTT Transmissions platform as fees for contribution link services that it purports to be providing and demanded payment from broadcasters failing which it would prevent the said broadcaster from sending any content to the DTT platform for transmission to the general public. The 2nd Defendant indeed went ahead to disconnect broadcasters who by protest refused to pay the said fees, and reconnected those who yielded to their demands to pay.
16. Plaintiff says that when the 2nd Defendant was challenged on the basis of its authority to charge the fees it has demanded from broadcasters, it stated that it was the Minister of Communications and Digitalization who by a letter mandated it to charge and collect the said fees and further to disconnect any broadcaster that does not pay the fees charged.
17. Plaintiff contends that save for the condition in the respective authorizations from the NCA to provide their content to the DTT Transmissions platform in digital form, with the GPS Coordinates made available to them in order to facilitate their installations, at no point in time in the migration process was it agreed that there will be the creation of another separately



dependent service which the broadcasters would be required to pay for, now being described as "contribution links service".

18. Members of Plaintiff are unaware of the arrangement between the Ministry and the 2nd Defendant by way of fees and charges and have never been informed about any such financial arrangements nor engaged in discussions pertaining the provisioning of links services by the 2nd Defendant attracting payment of fees.
19. Plaintiff further contends that the fee established by the Ministry of Communications and Digitalization for the 2nd Defendant to collect are not in accordance with law as the authority that has the power to establish a fee for the use of a national infrastructure like the DTT Transmissions platform is the Parliament of the Republic of Ghana and not by a letter from a Minister of State.
20. Plaintiff therefore says that to the extent that the decision establishing the fees which the 2nd Defendant is also enforcing with disconnections leading to termination of the broadcasting services from the DTT Transmissions platform, does not have any parliamentary approval makes the said decision ultra vires the powers of the Minister of Communications and Digitalization and therefore null and void.
21. Furthermore, having regard to the authorizations granted members of the Plaintiff by the NCA, broadcasters are required, and at their own cost to send their content to the DTT Transmissions platform and not required to do so by a compulsory service provided by the 2nd Defendant.
22. Plaintiff further says that the decision to establish the fees by the Ministry is also most unreasonable as it forces a unilateral contract between broadcasters and the 2nd Defendant to provide a service broadcasters have not requested and of which they are able to provide on their own as required, at a much cheaper cost.
23. Plaintiff further says that the further decision of the Ministry instructing the 2nd Defendant to disconnect any broadcaster that refuses to pay the impugned fees is also not backed by law, most unreasonable and amounts to abuse of discretionary powers without any regulations backing same as required by the 1992 Constitution.
24. Plaintiff says that apart from the unauthorized fee above the Ministry is also demanding from the members of the Plaintiff to pay to Central Digital Transmission Company Limited (CDTCL), some arbitrary fees it refers to as the TV Channel hosting fees for broadcasters being hosted on the national DTT Platform.
25. The decision of the Ministry establishing the TV Channel hosting fees for broadcasters being hosted on the National DTT Transmissions Platform, without parliamentary approval or any legal basis is unlawful and therefore void.

