

Bonga points earned are customer's property: *High court decrees*

31st January 2025

On 27th November, 2024, the High Court in Nairobi delivered judgment in Benjamin versus Safaricom PLC and 2 others (Petition No. E554 of 2022). In the judgment, the court held that bonga points awarded to a subscriber are the customer's property and Safaricom PLC ceases to have rights over them once awarded.

The background to the dispute was that in October 2022, Safaricom PLC issued a notice through its website and other media platform to the effect that all Bonga Points earned by its customers and which were three years old would expire by January 2023. Customers were further advised that the points would no longer be redeemable. Aggrieved, the petitioner challenged that decision in court, arguing that the notice was an ambush to the members of the public that would negatively impact millions of subscribers who stood to lose their accumulated points upon the expiry of the notice period.

The petitioner argued that the decision by Safaricom PLC was abrupt, unfair, and violated consumer rights, particularly affecting disadvantaged groups due to Kenya's digital divide

and literacy levels. Other key concerns raised included the lack of public consultation, breach of customers' legitimate expectations, failure to uphold the duty of care owed to subscribers, violation of consumer protection laws, regulatory oversight lapses and possible abuse of market dominance.

Safaricom opposed the petition, challenging the jurisdiction of the court to hear and determine the petition and asserted that the expiry policy was within its legal and

commercial rights. It argued that Bonga Points were a voluntary program with terms allowing modifications, including expiry dates. It also asserted that it had revised its terms in June 2022, informed customers and regulators and conducted a public awareness campaign. It justified the expiration policy as a standard business practice essential for financial sustainability and stated that no legal obligation required public consultation for such a decision. Additionally, it argued that the revised terms had not yet been enforced.



The Communications Authority of Kenya (CAK) (the 2nd respondent), also opposed the petition, arguing that the matter was outside its mandate. It further argued that Bonga points were a promotional initiative rather than a regulated service. CAK maintained that since the expiry policy had not been implemented as of March 2024, the petition was moot and should be dismissed.

The High Court ruled that it had jurisdiction to hear the case under Article 165(3)(b) of the Constitution, as the matter involved the question of whether consumer rights had been denied, infringed, violated or threatened. It further ruled that Safaricom relinquished any rights over Bonga points once they were awarded, meaning it could

not unilaterally introduce new terms or expiration dates for points already accrued by

subscribers. The court held that the unilateral introduction of expiry dates violated consumers'

economic rights and legitimate expectations. Additionally, it found that the 2nd respondent had failed to fulfill its consumer protection mandate. Consequently, the court declared Safaricom's notice unconstitutional, null and void. It issued orders quashing the policy and prohibiting its implementation.

The High Court's decision reaffirmed the importance of protection of consumer rights and corporate accountability. By declaring Safaricom's policy unconstitutional, the court emphasized that goods and service providers cannot unilaterally alter consumer benefits without due process and consultation. The decision also underscored the responsibility of regulatory bodies, such as the CAK, in safeguarding consumer rights. This case sets a precedent for fair business practices, ensuring that consumer rights and interests are protected.

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