



③ Mr. Charles Mwangi
 pl. renew this petition *urgently*
 forgetting presentation in Feb. by
 3rd March, 2015
 8/3/2015
 26/2/15

AFRICA DIGITAL NETWORK LIMITED
 P.O. BOX 7468-00300
 Nation Centre, 7th Floor, Kimathi Street
 NAIROBI, KENYA

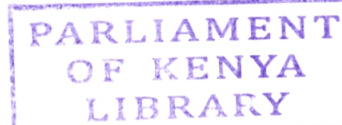
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① DLPS
 Please deal
 26/02/15

Petition to Parliament (Senate)
Articles 119, 37, 10 of the Constitution

And

Standing Order 219: Standing Orders of the Senate



We, (1) the Nation Media Group (NMG) the proprietors of NTV/QTV; (2) the Standard Group (SG) the proprietors of KTN; and (3) Royal Media Services (RMS) the proprietors of Citizen TV; humbly present this, our Petition, to the Senate.

The attention of the Senate is drawn to the following:-

1. Following the meeting of the International Telecommunications Union (ITU) in Geneva, Switzerland in mid-2006 at which 17th June 2015 was set as the Analogue Switch off Date (ASO) for sub-Saharan African countries, Kenya generated two Reports following participatory consultations with stake holders including the three Petitioners; to wit,
 - (i) The National Information and Communications (ICT) Policy

② DDLPS
 Please peruse. I remember there
 is a matter in court, has it been
 concluded? Kindly prepare for presentation.
 If the petition can be proceeded with
 26/2/15

Statement dated 31st March 2006; and (ii) The National Digital Migration Task Force Report dated 4th October, 2007.

2. In both Reports, it was agreed that Local Broadcasters who had invested heavily in infrastructure (The Three Media Houses have between them invested over Kshs. 40 billion in infrastructure over the last 15-20 years) would be issued with a Broadcast Signal Distribution Licence (BSD) so that their existing infrastructure is utilized and thus not go to waste.
3. When it came to implementation, this provision in the Reports was ignored. The Local Media Houses were asked to compete in an open international tender for the BSD Licence. They were disqualified on a technicality, to wit, that their bond for Kshs. 500,000= was for 60 days instead of 120!

The Chinese were awarded the tender notwithstanding that both Reports required any foreign entity to have 30% local equity participation to qualify which the Chinese did not. Why were they not disqualified?

The Chinese did not have a single infrastructure on the ground when they got the tender.

4. Only two companies, the Government owned Kenya Broadcasting Corporation (KBC) through its subsidiary Signet and the Chinese, Pan African Network Group (PANG) are Licensed BSD carriers.
5. What the three Media Houses object to is being forced to have their contents carried by only either the Government controlled KBC or the Chinese. The reasons for these are:-

(a) It hands the Government of the day the opportunity for control. The Government will have the capacity henceforth to decide what Kenyans will watch on their TV sets. The concept of Media Freedom is alien in the Peoples Republic of China. It is naïve to expect that they can promote Media Freedom in Kenya. They will self censor even before the Government of the day directs them to. In discussions with the Petitioners, the Chinese have already made it clear that they will not transmit any matter critical of Government. The less said about KBC/Signet, the better.

Article 10, National Values and Principles of Governance makes it clear that Kenya is constitutionally a participatory democracy. The people of Kenya can only meaningfully participate if they are fully informed and the most effective medium of information today is Television. The Petitioners state that Articles 33 and 34 of the Constitution are being violated in the manner in which migration to digital platform is being handled.

Devolution, which is the centre piece of the 2010 Constitution, was intended to enhance and promote participation of the people in their affairs. In turn one of the Senate's primary functions is to protect devolution. This petition is thus legitimately presented before this August Senate.

The three independent Media Houses will no longer be able to guarantee the integrity and accuracy of what is shown on their screens.

(b) Their Kshs. 40 billion investment in infrastructure will go down the drain.

(c) The arrangement runs counter to Media Freedom Article 34 and the right of the Kenyan people to receive information, Article 33.

6. After protracted litigation going all the way up to the Supreme Court, the three Media Houses were at long last issued with a Self-Provisioning Licence on 25th November 2014 permitting them to carry their own contents. They were subsequently on 15th December 2014, allocated 21 UHF Frequencies. To digitally broadcast countrywide, one needs at least one UHF frequency in each of the 56 digital sites in the Country. This digital mapping identifying the 56 sites was done by the Communications Authority of Kenya, CAK and the GoK. To cover

Nairobi and its environs, one needs a frequency at each of the four (4) digital sites in Nairobi and the environs, Limuru, Naivasha, Rahimutulla and the hills near Daystar University in Machakos County. Nairobi and its environs in digital mapping includes, Naivasha, Northern parts of Narok, Kajiado, Machakos, Thika, parts of Muranga County, Kiambu County and of course the County of Nairobi. The three Media Houses were allocated only one frequency for Nairobi through their special purpose vehicle Africa Digital Network Limited (ADN). They request an additional three (3) to enable them to effectively cover Nairobi and its environs. The Chinese have UHF frequencies in Nairobi at each of the 4 sites.

7. Since ADN was allocated the single frequency for Nairobi only on 15th December 2014, they legitimately argued that it was impractical to migrate by 31st December 2014 in Nairobi. They needed to order transmitters, antennae and set top boxes (STBs). Transmitters in particular are frequency specific meaning that one must inform the manufacturer the frequency for which that particular transmitter will carry because that specific frequency must be synchronized with that particular transmitter. It was only when CAK and GoK refused to commit not to switch off the three Media Houses that they went back to the Supreme Court on 30th December 2014 to pre-empt being switched off.

8. In clear violation of Article 10 of the Constitution, CAK has allocated the Chinese 120 UHF frequencies out of the total available of 211.
9. UHF frequencies the world over are reserved for Free to Air broadcasters and are rarely allocated to Pay TVs who use Satellite or cable. Kenya is the exception. The 120 frequencies are being used by Star Times, a pay TV and a subsidiary of PANG. The tax funded KBC's Signet has handed over its UHF frequencies to GOTV, a subsidiary of the South African Company, Multi-Choice.
10. Only three countries in Sub-Saharan Africa have so far migrated, Mauritius, an island nation of 1.2 million people, relatively wealthy meaning acquisition of set top boxes is not an issue, Rwanda, a geographically small country served by only one transmitter and Tanzania which one should not list as having migrated in that television viewership literally collapsed since very few Tanzanians were able to afford the set top boxes.
11. A recent survey shows very few countries in Sub-Saharan Africa will be able to beat the 17th June 2015 deadline. Two weeks ago, ANC's governing body directed the South African Government to subsidize acquisition of set top boxes. There is provision for any Country to apply to ITU for extension up to 2020.
12. Kenya can successfully migrate before the deadline if the GoK and CAK work hand in glove with the three Media Houses instead of fighting

them. This is because between the three of them, they have a television viewership of well over 80%. It is **important** to bear in mind that when one talks about digital migration, it is **not** about a Media House migrating, it is about the Kenyan people, the television viewers migrating by **having** the set top boxes.

There are in Kenya today approximately 500,000 set top boxes out of which only 50,000 are Free to Air, the rest are pay TVs. A majority of the Kenyan people depend on Free to Air and cannot afford the Kshs. 800 on average monthly subscriptions for pay TVs which Star Times and GOTV are. KTN, Citizen and NTV/QTV are Free to Air.

There appears to be a deliberate policy to move Kenya towards Pay TVs notwithstanding that a majority of the people will not be able to afford the Pay TVs monthly subscriptions and will thus have their rights under Articles 33 and 34 curtailed.

13. The public needs education on the difference between a pay TV set top box and a Free to Air set top box. Yet when the three Media Houses carried adverts seeking to educate the public, their Self Provisioning Licence was promptly cancelled at a press conference and their UHF frequencies re-possessioned. These were reinstated by the Supreme Court only on 13th February 2015.

14. Since the Supreme Court when reinstating the Self Provisioning Licence and UHF frequencies left the dates set by the GoK/CAK in place, CAK misinterpreted this to mean that the Court had directed a switch-off. The Court did not. The Court has in the past been accused of interfering with other arms of Government and the Supreme Court was clearly being careful to leave the switch off time lines to the Communications Authority. The Court did not direct any switch offs.
15. The position of the three Media Houses is that the Supreme Court reinstated their Self Provisioning Licence and frequencies only on 13th February 2015. They need up to 30th May 2015 which is well within the ITU ASO date of 17th June 2015 to have their Transmitters, antennae and set top boxes manufactured, shipped, cleared in Mombasa, transported and installed to enable them to migrate. In particular, the public must be persuaded to purchase the set top boxes. Had CAK issued the three Media Houses with a BSD Licence and frequencies a year ago, there would not have been any issue today about digital migration. It is the refusal by CAK/GoK to do so that is the direct cause of the current situation.
16. The set top boxes which the three Media Houses have had designed and now being manufactured will retail at no more than Kshs. 2,500=. They will be the cheapest in pricing in the market. They will be high quality. Some poor quality boxes are in circulation, an issue about which the

Regulator is mum. In addition, these boxes have internet. A TV with this internet enabled set top box in the countryside will mean that there will be internet access! This will be a technological revolution. If the GoK is still keen on the schools lap top project, it should be jumping to support the three Media Houses. The top set boxes also have 3G which will facilitate money transfers, m-pesa style.

Finally, the three Media Houses have made credit arrangements for those who may not be able to raise the Kshs. 2,500= purchase price. It is to be noted that this Kshs. 2,500= is a one off payment, once one acquires the set-top box, there are no monthly payments. The three Media Houses remain Free to Air, not Pay TVs.

17. It must be said that CAK, which is Government controlled appears to dance to every wish of the Chinese. The three Media Houses welcome competition but on a level playing field. They are particularly opposed to their contents, like Churchill live and Papa Shirandula for which they pay a lot of money being pirated by the Pay Televisions who charge their customers. It does not happen anywhere else in the World. Intellectual Property requires to be respected. The Supreme Court was clearly in error in upholding the validity of this regulation by CAK which authorizes violation of Intellectual Property rights despite the clear provisions of Article 40 of the Constitution. This Regulation is further a demonstration of how CAK tilts the ground in favour of foreign owned

Pay TV Companies. If a pay TV wishes to offer a particular Free to Air Media TV contents as part of its buque, it must negotiate and agree on terms and conditions with that Media House.

18. The Petitioners have made every effort to resolve this dispute amicably with the Communications Authority of Kenya, the Cabinet Secretary for Information and Communication Technology, the Deputy President and the President himself. The matter remains unresolved. The most urgent issue is to get the Petitioners back on air while resolution of other matters is being pursued.

19. The Petitioners themselves have not raised the issues they raise in this Petition in any pending Court proceedings or Constitutional or Legal body but they are aware that one Okiya Omtatah Okoiti has filed a Petition No. 59 of 2015 at the High Court at Nairobi in which he appears to be raising in his Petition some of the issues which the Petitioners raise in this Petition.

20. The Petitioners are **not** and have never been opposed to Digital Migration. They will be beneficiaries of migration, including having many channels available to them. The propaganda that the Petitioners are opposed to migration has no basis whatsoever.

21. WHEREFORE your humble Petitioners pray that the Senate **Resolves:-**

(a) That the migration date be moved to 30th May 2014. This will accord them time to have transmitters and set top boxes manufactured, shipped, distributed and installed.

(b) That CAK immediately returns the equipment they dismantled and carted away to enable the three Media Houses to go back on air on analogue. The period between now and 30th May 2015 will be the simulcast period when the Media Houses will be broadcasting in both analogue and digital.

This forcible switch off is costing Citizen TV Kshs. 240 million monthly in over-runs, NTV/QTV Kshs. 120 million and KTN Kshs. 80 million. These figures do not include loss in advertising revenue which is the mainstay of Free to Air Media Houses.

(c) That the Petitioners be given the 3rd BSD Licence as per the ICT Policy and Task Force Reports.

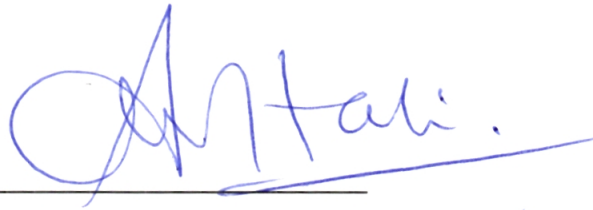
(d) That the contents of the Petitioners shall not be carried by anyone else without their prior consent.

(e) That a Broadcasting Bill be enacted creating a Broadcasting Authority independent of Government, charged with the mandate of frequencies allocation and all other matters broadcasting. That Articles 33, 34 and 35 of the Constitution be respected and fully implemented via the said Bill.

Although the three Media Houses are in business, they serve the Kenyan people. The interests of these people should be borne in mind.

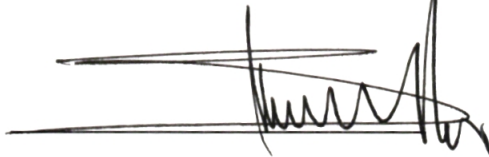
Signed by:

Nation Media Group

A blue ink signature, appearing to read 'Linus Gitahi', written over a horizontal line.

Linus Gitahi - Chief Executive

Standard Group/KTN

A black ink signature, appearing to read 'Sam Shollei', written over a horizontal line.

Sam Shollei - Chief Executive

Royal Media Services

A blue ink signature, appearing to read 'Wachira Waruru', written over a horizontal line.

Wachira Waruru - Chief Executive

Drawn for the Petitioners by:-

P.K. MUIKE, S.C.

ADVOCATE

Chaka Apartments,

Chaka Road, off Argwings Kodhek Road,

Tel: 254-020-2730630,

P. O. Box 14746-00100,

Nairobi, Kenya



New file
digital

REF: CCK/PROC/RFP/09/2010-2011

June 17, 2011

National Signal Networks
c/o
Mr. Linus Gitahi
Group Chief Executive
Nation Media Group Ltd
P O Box 49010 Nairobi 00100 Kenya

Dear Sir,

**REQUEST FOR PROPOSAL FOR AWARD OF A LICENSE TO ROLL OUT AND
OPERATE A NATIONAL BROADCASTING SIGNAL DISTRIBUTION NETWORK
IN KENYA.**

Reference is made to the above tender and your subsequent submission of a bid.

The Commission wishes to inform you that the Technical Evaluation of the above tender is now complete.

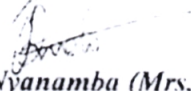
We regret to inform you that your technical proposal was disqualified at the mandatory evaluation stage because your bid security did not meet the required tender security validity period as provided for in Clauses 3.8, 3.9.1 & 3.9.2 of the tender document. Your financial proposal will therefore be returned unopened after completing the selection process.

We however invite you to witness the opening of the financial proposals for those who were successful, on Monday 20th June 2011, at 2.30pm. This will take place at the CCK Centre, first floor meeting room 1.

We thank you for participating in this tender and look forward to your continued cooperation.

Yours faithfully,

COMMUNICATIONS COMMISSION OF KENYA


Joyce Nyanamba (Mrs.)

For: DIRECTOR GENERAL

cc: Chairman/Group Managing Director
Royal Media Services Ltd
P.O Box 7468 Nairobi 00300

EXECUTIVE SUMMARY
TO BE COMPLETED

ADN BUSINESS PLAN JAN 2015

PAGE 9 OF 125

THE ROAD TO DIGITAL MIGRATION

Prior to the year 2006, the allocation and management of terrestrial television broadcast frequencies at the global level was governed by international treaties known as Stockholm 1961 and Geneva 1989 VHF/UHF Television Broadcasting Plans for the European and African Broadcasting Areas, respectively for Bands I, III, IV and V ("Geneva 1989"). Band III refers to 174-230 MHz, while bands IV and V refer to 470-862 MHz on which analogue terrestrial television broadcasts are presently made. These bands are also known as Very High Frequency (VHF) and Ultra High Frequency (UHF) respectively. In Kenya, analogue terrestrial television broadcasting is undertaken by broadcasters on frequencies between the 174-230 MHz band and 470-806 MHz band.

Following developments in technology and the need to efficiently utilize scarce frequency spectrum resources, sometime in the year 2000, some countries in ITU Region 1 and ITU Region 3 desired to introduce digital terrestrial television broadcasting in their respective areas and to this end requested the ITU to revise and update the Stockholm 1961 and Geneva 1989. Consequently, Region 1 held its first Regional Radio Communication Conference in 2004 ("RRC-04") in Geneva, Switzerland to establish the planning parameters for an all-digital broadcast environment in Region 1.

Later on another conference RRC-06 was held on June 17, 2006.

Among other things, RRC-06 agreed on 17th June 2015 as the switch off date for transition from analogue to digital terrestrial television broadcasting for member states present at RRC-06. In line with the Final Acts of RRC-06, and in fulfilment of its international obligations, the Government of Kenya embarked on local preparations to transit terrestrial television broadcasting from the analogue platform to the digital platform.

It is worth noting that by not being signatories to RRC-06, the other 75 countries were given up to June 17, 2020 to migrate from analogue to digital broadcasting.

Kenya launched her transition to digital broadcasting on March 14, 2007 with the establishment of the Taskforce on Migration from Analogue to Digital Broadcasting. This was in line with the decision taken at the Regional Radio Communications Conference in Geneva in 2006 where it established a digital terrestrial plan for 120 countries (Europe, Middle East, former Soviet republics, Iran, and Africa) to switch-off analogue transmission by 17 June 2015.

WHAT DOES DIGITAL MIGRATION MEAN?

The rationale for migration is that analogue broadcasting technology uses electromagnetic waves that are inefficient, expensive, obsolete, and which use too much frequency spectrum. Analogue broadcasting technology:

1. requires a lot of bandwidth
2. limits the number of stations that can be accommodated on the radio spectrum
3. therefore limits the number of stations available
4. means that one television frequency can only accommodate one station

Digital terrestrial television is transmitted by radio frequencies through the use of multiplex transmitters which allow reception of multiple channels in the same space as has been previously

occupied by just one analogue channel. The viewer receives a signal via digital set-top-box or another integrated receiving device capable of decoding the signal received by a standard aerial antenna.

Under digital technology, sound, video, text, still images, can be stored and transmitted. This means:

- i. a common currency with audio, pictures, text, all reduced to binary data.
- ii. digital data can then be compressed by algorithms allowing:
 1. more content to be stored in less space
 2. this allows for more content to be transmitted on same bandwidth (6- 12 additional channels)
 3. digital compression enables data to be broken down into separate and simultaneous "packets"

What this means for broadcasting is:

- I. the ability to squeeze many more radio and television channels into exactly the same frequency space than is possible under analogue transmission
- II. enables flexible use of airwaves
 - a) allowing for channels within channels
 - b) user has the power to pause and even rewind up to a point (of course depending on the kind of television set and technology present!)

A digital broadcasting signal transmission is allowable through four options:

- a. an integrated television with in-built DVB-T2 tuners
- b. a Pay-TV (satellite or cable) Set Top Box (STB) or Decoder (as it is popularly known)
- c. ordinary Television sets connected to an external Set Top Box (STB)
- d. internet protocol

Marcel Golding, CEO of eTV says, "migration to digital television will lead to: more television channels on air; more audience choice; and, more diversity of content".

In his paper "*Challenges and Perspectives of Digital Migration for African Media (2010)*", *Guy Berger* argues that:

1. the introduction of new channels will fragment audiences...drive down advertising rates
2. advertising inventory can now cater to niche interests with a proliferation of digital channels, with more prime-time possibilities on sales
3. digital migration leads into new television channels, the fragmentation of audiences into specialist channels, signals the end of the era of selling mass media audiences to mass market commodity vendors
4. as *Tom Mzungu (Ipsos March 2013)* notes, overall time spent on an individual television station is expected to decline rather than increase.

In their 1999 essay, "*Broadcasting Media in the Age of Risk: The advent of digital television*", *Chalaby and Segell*, argue that digital television migration will transform: how we watch television? how we use television? the way television is made?

Some important observations made in a study titled, "*Mapping Digital Media: Digital Television, the public interest, and European Regulation (2012)*" state that audiences can choose whether to continue viewing

scheduled television or to consume TV on the go, on the office computer, on a mobile phone, or on a tablet, or on a gadget such as the Drifta marketed by DSTV. In this case, the constraints of time and place will no longer apply.

GLOBAL DIGITAL MIGRATION

Globally, the migration from analogue to digital television broadcasting has largely been felt in Europe, the Americas and some parts of Asia.

Only 51 (26%) of the world's 195 countries had migrated to digital television by August 2014 with countries amongst the European Union (EU) as the most compliant. From the 120 countries who were signatories to RRC-06, this is 61%.

2006	2007	2008	2009	2010	2011	2012	2013	2014
Netherlands	Finland Andorra Sweden Switzerland England	Germany	Isle of Man Denmark Norway USA	Estonia Guernsey Latvia Belgium Croatia Spain San Marino Luxembourg Wales	France Slovenia Israel Monaco Austria Cyprus Japan	Ireland Italy Lithuania Canada Portugal Qatar Saudi Arabia Slovakia South Korea Taiwan Czech Rep Northern Ireland Gibraltar UAE	Greece Hungary Australia Bulgaria Macedonia Poland Mauritius Tanzania New Zealand	Rwanda

Source: ITU

Implementation of the digital migration is still very low in developing countries and all indications are that the world will NOT meet the 17 June 2015 deadline. This is also seen through the lengthy analogue switch-off (ASO) periods of up to 14 years presented in a sample of 14 European countries below at an ITU Regional Forum in Dubai on 17 May 2014:

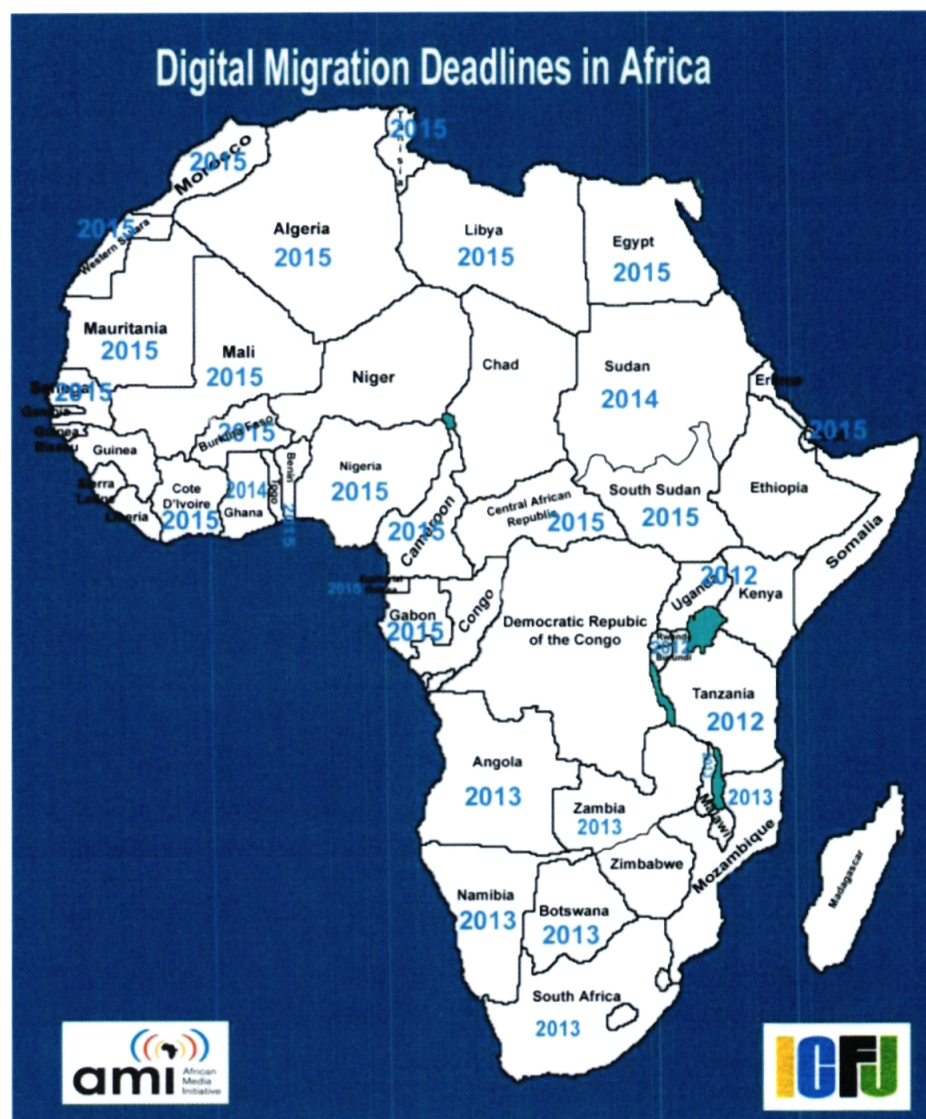
Country	Start of DTT process	Eventual Analogue Switch-off (ASO)	No. of years to switch-off
UK	1998	2012	14
Sweden	1999	2007	8
Spain	2000	2010	10
Finland	2001	2007	6
Switzerland	2001	2007	6
Germany	2002	2008	6
Belgium	2002	2010	8
Netherlands	2003	2006	9
Italy	2003	2012	9
France	2005	2011	6
Denmark	2006	2009	3
Austria	2006	2011	5
Norway	2007	2009	2
Portugal	2008	2012	4

DIGITAL MIGRATION IN AFRICA

In Africa, less than 2% of the countries (3 out of 53 countries – Rwanda, Tanzania and Mauritius) had migrated to digital television broadcasting by the end of 2014! And, this is less than 7% of the signatories to RRC-06.

13 African countries: Benin, Central Africa Republic, Eritrea, Ethiopia, Guinea-Bissau, Equatorial Guinea, Liberia, Madagascar, Niger, Democratic Republic of Congo, Sao Tome & Principe, Sierra Leone, and Somalia, who were not present at RRC-06 are allowed transition to digital television by 17 June 2020.

Although for 40 other African countries the deadline for migration to digital television was set for 17 June 2015,



only 3 countries in Africa have been able to meet this deadline.

A 2014 edition of Digital TV Research titled “*Digital TV Sub-Saharan Africa Forecasts*” predicts that 54% of a sample of 35 African countries (see table below) will migrate after 2017 and beyond.

Country	DTT start	Projected (by DTV Research)ASO completion	Time expected to complete process (years)
Angola	2012	2017	5
Benin	2015	2019	4
Botswana	2014	2019	5
Burkina Faso	2014	2018	4
Burundi	2010	2015	5
Central Africa Republic	2010	2016	6
Chad	2014	2019	5
DR Congo	2014	2019	5
Rep. Congo	2015	2019	4
Cameroon	2014	2018	4
Cote d'Ivoire	2015	2019	5
Eq Guinea	2015	2019	5
Ethiopia	2015	2021	6
Gabon	2009	2015	6
Gambia	2015	2017	2
Ghana	2010	2016	6
Guinea	2010	2016	6
Kenya	2010	2015	5
Liberia		2015	
Madagascar	2011	2015	4
Malawi	2011	2016	5
Mali	2014	2019	5
Mauritius	2005	Completed 2013	7
Mozambique	2011	2018	3
Namibia	2012	2015	5
Niger	2014	2019	9
Nigeria	2007	2016	7
Rwanda	2007	Completed 2014	3
Senegal	2014	2017	4
Sierra Leone	2013	2017	2
South Africa	2014	2016	3
Tanzania	2010	Completed 2013	5
Togo	2012	2017	5
Uganda	2010	2015	5
Zambia	2011	2016	4
Zimbabwe	2013	2017	8

DIGITAL MIGRATION IN KENYA

As *Guy Berger* notes...The bulk of television viewing public are not likely to get digital terrestrial television immediately, either:

1. due to signal range limitations
2. due to the extent of availability and cost of STB's

For this constituency:

- i. the information divide will be greater because this group will remain with existing analogue television services through which content cannot be accessed or used
- ii. whilst this is happening, better-off community will begin to experience more channels
- iii. and if analogue is switched-off prematurely, those without STB or digital receivers in their TV sets, will be disenfranchised in terms of receiving news and information.

In Kenya, an unusual phenomena has been allowed to prevail. Majority of STBs sold so far comprise more than 90% Pay-TV. This means that less than 10% of the STBs will be Free-to-Air. This has huge implications on promoting universal access for the poor whose only access to television has been through Free-to-Air broadcasting.

A report titled "*Digital TV Sub-Saharan Africa Forecasts, 2014 edition*" by digital TV research provides StarTimes subscriber estimates at the end of 2013 as follows:

StarTimes subscriber estimates at end-2013 ('000)		
	Registered subscribers	Active subscribers
Total	2,750	1,100
Burundi	80	32
Central African Republic	20	8
Guinea	20	8
Kenya	250	100
Mozambique	40	16
Nigeria	1,750	700
Rwanda	80	32
Sierra Leone	10	4
Tanzania	250	100
Uganda	250	100
Source: Digital TV Research		

The report goes on to state: *China-based StarTimes is the most active DTT operator, with about 2.75 million registered subs across 10 countries by end-2013, but only 1.10 million of these homes are estimated to be active subscribers. This reveals a very high churn rate, which stresses the logistical problems in obtaining pay TV payments and the company's emphasis on selling settop boxes (although its channel offer has improved considerably in the last year).*

The immediate implication of this is a high attrition rate of 60% for Pay-TV subscribers which evidently will threaten the FTA advertising-business model if the bulk of STBs are Pay-TV.

A key component of the migration to digital television is that at the beginning each viewer has an option of changing platforms from analogue to digital that involves the payment of a fixed 'switching' cost:

- a. the psychological cost of changing platform due to inconvenience and time needed
- b. the physical cost related to the fixed cost of new equipment needed to connect the new platform that will range from: purchase of a set-top-box or satellite dish, and purchase of an aerial and/or the cost of rewiring.
- c. the additional cost incurred if they decided to access digital television via a terrestrial free-to-air platform (where it is free) or a digital satellite or cable service provider platform (where they will pay monthly subscriptions as well as one-off STB equipment set up costs)

It is important to note that the switching costs in the migration to digital television bring with them increased choice. Viewers will have increased chances to watch WHAT they want WHEN they want. But once they have sufficient choice, the key issue will become quality not quantity!

SOME DIGITAL MIGRATION HURDLES IN AFRICA

Tanzania

On 31 Dec 2012, Tanzania became the first country in mainland Sub-Saharan Africa to switch from analogue to digital television. What hurdles did she face in her migration to digital terrestrial television?

- 20% lost access in Dar es Saalam (at least for sometime)
- STB's were expensively priced at \$40 - \$60
- Broadcast Signal Distributors charged channels expensively (between \$3,700 and \$17,000) to access multiplexes.
- To date not all television sets have STBs.
- A Court battle ensued in April 2014 that has affected digital television migration implementation in 13 towns

Nigeria

Started planning the migration from analogue to digital terrestrial television in 2007 starting first in Abuja in June 3, 2008. Nigeria set a switch-off date of June 17, 2012 but to date has had little progress.

Mauritius

Mauritius was the first country in Africa to complete migration from analogue to digital terrestrial television with a 'soft' launch in 2005 by 2013 the migration was completed. But the process was marred by sale of many poor quality STBs that did not work!

[Print this page](#)

ANC clears the way for digital TV rollout

Feb 4, 2015 | Carol Paton

Party opts for encrypted signal which enables the government to protect its subsidy by preventing boxes from being bought and sold

THE African National Congress (ANC) has broken the deadlock over set-top boxes for television, confirming at its lekgotla last week that a Cabinet decision in favour of encryption taken a year ago must be implemented.

Set-top boxes will be required for all analogue TV sets once SA's transmission signal switches to digital. Set-top boxes for poor households will be subsidised by the government.

The deadline for this "digital migration" has been set by the International Telecommunication Union as June 15 this year. However, a protracted battle over the set-top boxes — in particular, whether or not they will provide "conditional access", in other words be encrypted — between powerful stakeholders has delayed SA's changeover.

Among the players are MultiChoice, which has lobbied fiercely for nonencryption, and e.tv and an array of civil society organisations, including the Congress of South African Trade Unions, which want encryption.

An encrypted set-top box can be switched off by the signal provider or broadcaster.

While this provides security if the unit is stolen, it also creates an opportunity for new players to enter the pay-TV market, over which MultiChoice has until now had a monopoly.

An encrypted box would also protect free-to-air broadcasters from having their content pirated and broadcast, the basis on which e.tv supports encryption.

The lekgotla decision, which Communications Minister Faith Muthambi has been instructed by the ANC to take to the Cabinet lekgotla now under way, will clear the way for the manufacture of the boxes to begin and the migration to digital terrestrial television to take place.

The state's Universal Service and Access Agency of SA (Usaasa) closed a R4.3bn tender for set-top boxes last month.

In its official statement after the lekgotla, the ANC said: "Lekgotla has directed the finalisation of the digital migration process to support broadband roll-out. Government must move with the necessary speed to meet the deadline of 15 June 2015."

In an interview on Friday, ANC economic transformation committee head Enoch Godongwana said what this implied was that the lekgotla had decided that the Cabinet decision taken in December 2013 must be implemented.

"Cabinet already has a decision on this, and that decision in 2013 was for encryption. That decision must be implemented, so as far as the ANC is concerned, the matter is resolved," he said.

Two other ANC leaders who attended the lekgotla confirmed this, saying that Ms Muthambi had been instructed to take this decision to the Cabinet lekgotla.

However, the December 2013 decision was put to the Cabinet by former communications minister Yunus Carrim, not Ms Muthambi. Mr Carrim's support for encryption is widely believed among political and industry insiders to be a key reason for President Jacob Zuma's failure to reappoint him after the election.

Ms Muthambi has not acted on the decision since her appointment. She had not commented by the time of going to press.

The Cabinet statement of December 4 2013 set out the criteria for the decision on set-top box control as including to ensure that the government subsidy for set-top boxes is used productively; to stimulate the local electronics industry; and to reduce monopolisation and create competition in the pay-TV market.

Encryption would enable the government to protect its subsidy by preventing boxes from being bought and sold. It would also enable it to reserve set-top box manufacturing for the local industry, as without encryption it is anticipated that the market would be flooded with cheap imports.

Responding to the ANC decision, an e.tv spokesman said the broadcaster would "welcome the implementation of such a decision so as to see the speedy implementation of the commercial roll-out" of digital broadcasting.

MultiChoice corporate affairs GM Jackie Rakitla said the company was "not aware of any further official pronouncements on the matter from either the ANC or government" other than the brief mention in the press statement.

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Page 4 of the Submission

1st correction: Task Force Report dated July 2007—not September 2007. See Vol. 1 pg.313.

This is the Task Force Report as filed by and attached to Affidavit of 2nd Respondent(JTM1 to...), Joseph Tiampati Ole Musuni, Principal Secretary at the Ministry of Communication and Technology.

1. Legitimate expectation of the Appellants
(paragraph 10,11,12,13,14,&15)

(a) Vol.1 page 328 (TFR pg. 15, last 3 lines of 1st paragraph (i)

The existing broadcasters have already made significant investment in infrastructure.”
This is absolute. The incumbent Broadcasters have licenses and frequencies which they have invested on since they were issued to them, and they had no clause that they can be terminated and therefore , the investment on those licenses and frequencies if to be taken away, it can only happen if paid for in full to the investor.

The Policy and the TFR report recognizes this too

“There has to be a mechanism to ensure that this investment is not wasted.”

You cannot move into migration unless you have resolved this issue. It’s Kenya’s investment Policy anyway to protect every investment made, in particular, out of its licensing.

The frequency here is secondly. The most important is “the License” issued to one to invest. Frequency is just like “Land” allocated to you to build a factory, you are licensed to build.

(b) Vol. 1 pg.329-TFR Recommendation(top boxed paragraph) quote;

(i) *“The current broadcasters will be allowed to form an independent company/companies to run the signal distribution services in order to utilize their existing infrastructure”.*

Whichever the company/companies to be formed by the incumbent (existing) broadcasters will:

(i) *“This company/ies will be given the first preference to a signal distribution licence.”*

It has never been a choice and shall not be a choice, now or in future, by or of the 1st, 2nd and 3rd Respondents not to issue the Appellants with a license/s to distribute their own

signals (and for others willing) individually or collectively and or correctively as they may wish. This, in particular, is consideration of the stated Policy and TFR as are above fully protected by law of current investment (1 'a' above) by the Appellants.

It is clear in both the Policy and the TFR that the government arrived at the above (1b 'i' 'ii') on basis that it was its decision too to issue the Public Broadcaster with a licence as a signal distributor;

Quote;

“Based on the government decision to licence KBC as a signal distributor...”

For the following reasons:-

- (i) *“To avoid conflict of interests with private broadcasters and*
- (ii) To avoid *“cross subsidies”*
- (iii) Refer to Article 34 subsection ...For these reasons therefore items 1“a” and “b” above applies without any question for the migration to start and succeed.

2. From the above therefore

- (a) Signal distribution licence was first to be issued to the existing broadcasters first and foremost.

But we want to agree that the Appellants (with others) agreed the Public Broadcasters be issued first with the “licence” so that the existing broadcasters and other parties can do test runs funded by the government.

As we shall see later this public broadcasters KBC after the government funded the “test” installations, spending over shs.200million of public funds, it then handed the “test” unit to private businessmen who(illegally)

- (i) Started charging consumers for the signals the private broadcasters had given to KBC to “test” free-on-air digital TV. Private broadcasters withdraw their signals and the test failed.
 - (ii) The Public broadcaster is now understood to have given this same “test” unit to GOTV, another private and foreign broadcaster, and is using it as a signal Distributor un-licensed according to the Policy and the TFR and again illegally (The 7th Respondent).
- (b) In spite of the above, the existing broadcasters were forced to participate in the tendering process for licences to be distributors. They were not to. This tendering

was supposed to apply to distributors provided for in both the Policy and the TFR, as follows; Quote. See pg 258 (4.4 'b') 259 (4.4 J) and 260 item 4.6.

"The government will license signal distribution services to ensure that the use of broadcasting infrastructure is maximised."

These signal distributors are the ones who were to tender to be distributors. They were to be more than one. They were NEVER to be content Producers AT ALL.

It is in this category that the government created confusion forcing the current broadcasters, who were supposed to have been issued with licences to distribute own signals to tender. And even after tendering they were corruptly denied to get the licence (which they were entitled to and should have been given way ahead of this process of tendering).

All these are intended uncertainty created by the 1st, 2nd and 3rd Respondents and they are the once consequently responsible to the current failures to start off digital migration. If the transaction is done their way,

- (a) It will fail 100%
- (b) Some people and companies will corruptly collect money from poor Kenyans who end up without television (the pyramid scheme Kenyans are familiar with)
- (c) The country will not meet its obligations to ITU or any other international obligation on migration, even if it is taken to 2020 instead of 2015, from analogue to digital television

3. The Top-Set-Box

Read pg. 336 item 6.6.1

The Top-Set-Box or in broadcasting terms the decoder is as described in items

- FTA....pg. 23 of TFR item 30 ending top paragraph on pg.24 with words *"..have to be set.*

This Top-Set-Box that was to be provided for to Kenyans for transaction, it is strictly for Free-to-Air receiving of a digital television.

It does not allow the distributor of signals to alter such signals or censor the content provided by its producer while delivering to the consumers.

Any other Set-Top-Box like those described on pg. 24

- Free-access systems and
- Fully encrypted system

Are not viable propositions for a Free-To-Air broadcasting where content producers are in full competition? They allow the Distributor to have control of the content rather than the broadcaster. The broadcaster's content can be degraded and censored. They are used for Pay-TV-Providers.

Pay-TV-Providers were not, nor to be the Distributors of signal for the purpose of the migration and as such is provided for in the Policy and TFR.

The current licensed distributors are Pay-TV- content providers. These are licensed as distributors against the Policy and the TFR and illegally, to call a spade a spade. It is not provided for anywhere in the Policy and or TFR that Pay-TV- Providers be licensed to be distributors of signals.

In any case they own content and are competitors of content producers.

4. Refer to page 334 (pg. 21 of TFR)

"Simulcast Period: In order to ensure that television viewers without set-top boxes are not deprived of services, analogue and digital will have to be broadcast in tandem for some period – the "simulcast" period [the actual digital migration process, involving a gradual replacement of analogue broadcasting equipment by digital broadcasting equipment]."

This is a must. That is what happened world over. Example

---Existing broadcasters were given extra frequency each to run digital parallel to their analogue and when all its consumers converts to digital returns the extra one frequency.

---In addition the government issued two vouchers to each household to purchase two boxes.

The intended "KBC test" did not work at all and this is one reason why there are no FTA boxes in the market because KBC and its signet handed over the FTA test to private businessmen who converted the "test" to Pay-TV affair and illegally.

Print this page

DAILY NATION

2 DAYS AGO

Activist's suit in TV row should be heard

Kenya's four main television stations on Monday asked the court to allow a suit filed by activist Okiya Omtatah to proceed.



Lawyer Issa Mansur representing Nation Media Group, Standard Group and Royal Media Services in court on March 02, 2015 during the hearing of a petition in which activist Okiya Omtatah is challenging the switch-off of analogue broadcasting. Mr Omtatah (right) addresses the court during the hearing. PHOTO | PAUL WAWERU | NATION MEDIA GROUP

In Summary

- Africa Digital Network (ADN), a consortium owned by the four stations, argued that the suit by Mr Omtatah had raised new issues on consumer rights, which were not initially before the Supreme Court.
- The consortium, bringing together the Nation Media Group, Royal Media Services and the Standard Group, further denied claims by Attorney General and CA that the public was represented during the first dispute, saying the consumers' lobby only came in as an interested party.
- Mr Omtatah, however, maintained that his application was still alive, and that the court did not consider the rights of consumers who have been treated to a television blackout for more than two weeks after the CA switched off analogue broadcast by the three leading media houses.

Kenya's four main television stations on Monday asked the court to allow a suit filed by activist Okiya Omtatah to proceed.

NTV, QTV, KTN and Citizen tv, which control 90 per cent of TV viewership in the country argued that Mr Omtatah's case was different from a previous one that had been determined by the Supreme Court.

Mr Omtatah wants the Communications Authority of Kenya (CA) compelled to reinstate free-to-air television on analogue frequencies before the media houses migrate to digital transmission.

Africa Digital Network (ADN), a consortium owned by the four stations, argued that the suit by Mr Omtatah had raised new issues on consumer rights, which were not initially before the Supreme Court.

They said the case should not be locked out simply because the dispute on migration to digital broadcast had been before a higher court.

FINAL DETERMINER

"The Supreme Court judgment cannot be a final determiner of all the disputes relating to the digital migration. The petitioner's case is that the Communication Authority has violated the rights of television viewers, which was not an issue before the Supreme Court," said ADN lawyer Issa Mansur.

The consortium, bringing together the Nation Media Group, Royal Media Services and the Standard Group, further denied claims by Attorney General and CA that the public was represented during the first dispute, saying the consumers' lobby only came in as an

interested party.

According to Mr Mansur, the Consumers Federation of Kenya only supported the case of the three media houses and did not frame any issue on consumer rights to be determined by the court.

The CA and the AG had objected to the suit, saying it was a duplication of what had already been determined and asked the court to dismiss Mr Omtatah's case. State Counsel Mwangi Njoroge said there was nothing new in the petition, and interests of television viewers were covered by the Supreme Court ruling.

SAME PRAYERS

"The orders were the same ones being sought now. They are the same prayers he is seeking, which were not granted," said Mr Njoroge.

CA's lawyer, Mr Wambua Kilonzo said if Mr Omtatah was aggrieved by the decision, he should seek a review at the Supreme Court instead of filing another suit at the High Court.

Mr Omtatah, however, maintained that his application was still alive, and that the court did not consider the rights of consumers who have been treated to a television blackout for more than two weeks after the CA switched off analogue broadcast by the three leading media houses.

"There was no decision on the obligation to protect the poor majority from adverse effects of TV switch-off. My petition is about the viewer whose rights to information continue to be violated," said Mr Omtatah.

He argued in his petition that the Supreme Court did not order CA to terminate free-to-air television services and that by implementing the ruling selectively, the regulator ended up violating the rights of a majority of Kenyans who depend on the three media houses for information.

Justice Isaac Lenaola will make a ruling on March 10.

Print this page

DAILY NATION

25/2/2015

Court to hear digital migration case

Mr Okiya Omtatah claimed he has reason to believe CA is promoting Chinese pay TV.



Communications Authority of Kenya offices in this picture taken on. February 13, 2015.

PHOTO | JEFF ANGOTE | NATION MEDIA GROUP

In Summary

- The CA was last week given five days to respond to the suit by activist Okiya Omtatah.
- Mr Omtatah said many Kenyans had a legitimate expectation that after the Supreme Court had restored digital licence to three media houses.

The stand-off between Communication Authority of Kenya and three media houses over digital migration is back in court Wednesday for a hearing on whether to restore free-to-air television broadcast.

The CA was last week given five days to respond

(<http://www.nation.co.ke/news/Communications-Authority-Digital-Migration-Case-Okiya-Omtatah/-/1056/2630636/-/ekmb4p/-/index.html>) to the suit by activist Okiya Omtatah seeking to compel them to allow Nation Media Group, Royal Media Services and Standard Group resume free-to-air broadcast for a limited period as they set up their digital broadcast infrastructure.

Mr Omtatah claimed he has reason to believe CA is promoting Chinese pay TV for improper motive instead of allowing African Digital Network (ADN), the consortium of the three media houses, to have time to roll out their digital platform.

“The commission has turned Kenya’s migration to digital TV broadcasting into a forced relocation of everybody from free-to-air TV to pay TV while in most countries, digital TV broadcasting are used exclusively for free-to-air while pay TV use satellites and cable to distribute their content,” he said.

SUPREME COURT

He argued that the Supreme Court did not order CA to terminate free-to-air television services and that by implementing the decision selectively, the commission ended up violating the rights of majority of Kenyans who depend on the three media houses for information.

The activist submitted that since the international switch off date is June 17, there is no reason why the consortium of the three media houses cannot be allowed up to May 30 to set up free-to – air digital broadcasting on the 21 frequencies they have.

Mr Omtatah said many Kenyans had a legitimate expectation that after the Supreme Court had restored digital licence to three media houses, the migration from analogue TV broadcast would be handled professionally in a manner that protects public interest.

“CAK discharged their mandate of midwifing the digital migration incompetently and in total violation of the law. They did not consider interests of marginalised poor who could not afford digital pay TV, and who depend entirely on free-to-air TV,” said Omtatah.

According to the activist, majority of decoders sold has more than 90 per cent pay-tv and only less than 10 per cent free-to-air, which defeats provisions on promoting universal television access for the poor.

Mr Omtatah said the action which resulted to the television blackout was unconstitutional for denying Kenyans the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

Print this page

DAILY NATION

20/2/2015

Communications Authority of Kenya has 5 days to answer switch-off suit

Activist Omtatah seeks to have CA compelled to allow three TV networks resume operations.



The offices of the Communications Authority of Kenya in Nairobi. FILE PHOTO | SALATON NJAU | NATION MEDIA GROUP

In Summary

- Activist Omtatah seeks to have CA compelled to allow three TV networks resume operations.

PAUL OGEMBA

The communication authority has five days to respond to a suit by an activist seeking to compel it to restore free-to-air television broadcasts.

Justice Isaac Lenaola gave the order during the mention of a petition by Okiya Omtatah, who wants African Digital Network (ADN), a consortium of the Nation Media Group, Royal Media Services and Standard Group, to be allowed to screen their programmes as they set up digital broadcast infrastructure.

He also directed Mr Omtatah to serve the three media houses with the application to allow them to join as interested parties.

Mr Omtatah said he has reason to believe the Communications Authority of Kenya is promoting a Chinese pay TV firm for improper motives.

IMPLEMENTED SELECTIVELY

“The commission has turned Kenya’s migration to digital TV into a forced relocation from free-to-air TV to pay TV. In most countries, digital TV is used exclusively for free-to-air broadcasting while pay TV uses satellites and cable,” he said.

He argued that the Supreme Court did not order the regulator to terminate free-to-air services and that by implementing the decision selectively, the commission violated the rights of the majority who depend on the three media houses for information.

The activist submitted that since the international switch-off date is June 17, there was no reason why the consortium could not be given up to May 30 to set up their equipment.

“CA discharged its mandate of mid-wifing the digital migration incompetently and in total violation of the law. They did not consider the interests of the poor who cannot afford digital pay TV and depend entirely on free-to-air TV,” he said.

Mr Omtatah said the action which resulted to the television blackout was unconstitutional.

The hearing is scheduled for next Wednesday.

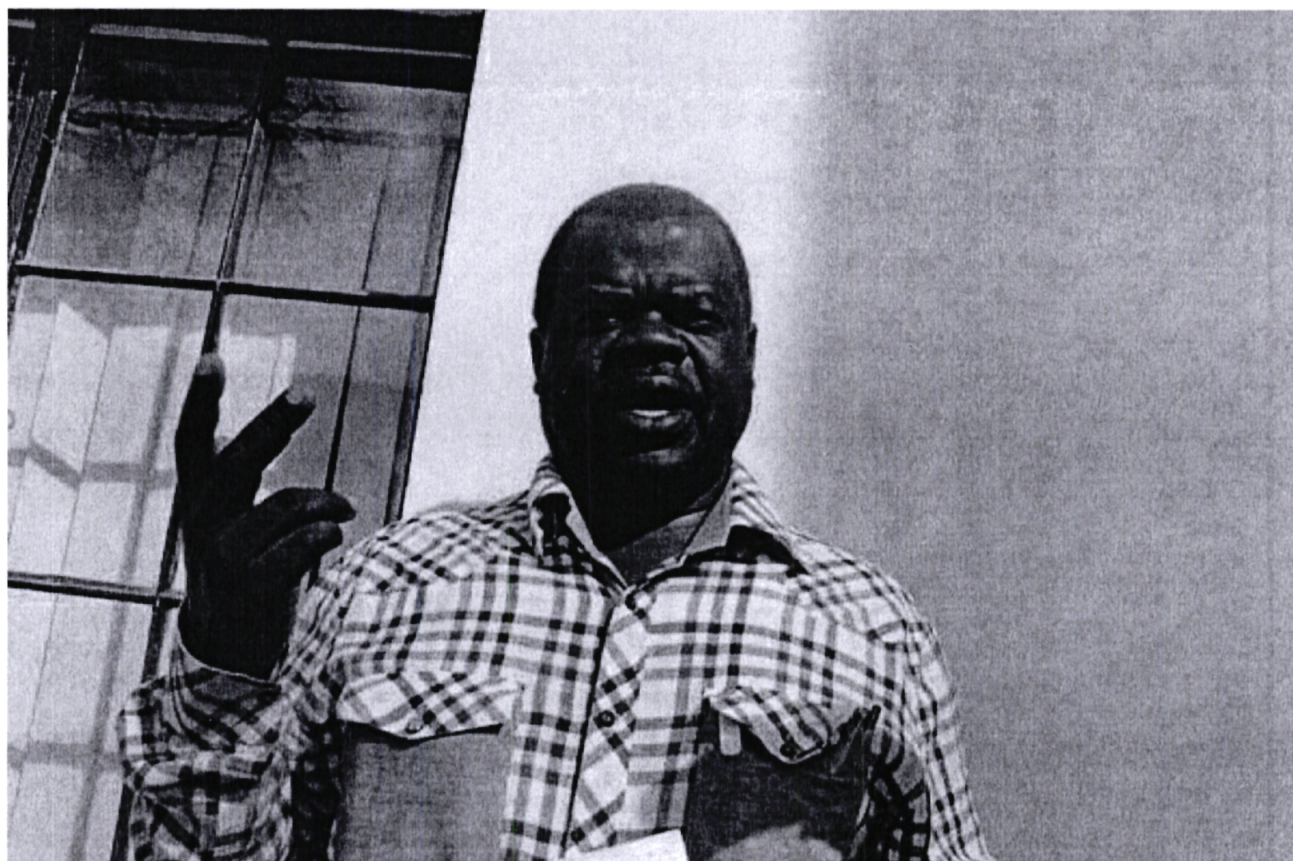
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DAILY NATION

25/2/2015

Omtatah: Court failed public in ongoing digital switch crisis

An activist has accused the Supreme Court of failing to protect public rights in its determination of a dispute between media houses and the government over digital migration.



Activist Okiya Omtatah. Mr Omtatah Wednesday said allowing the Communications Authority of Kenya to enforce the switch, and for the government to restore digital broadcast licence to the three media houses dealt only with broadcasting rights. PHOTO | PAUL WAWERU

In Summary

- “The court only considered broadcasting rights of the media houses and went ahead to order that they be issued with a licence. It, however, did not consider the rights of TV viewers,” said Mr Omtatah.
- Mr Omtatah argued that the Supreme Court did not order the authority to terminate free-to-air television services and that by implementing the decision selectively, it violated the rights of a majority of Kenyans.
- The activist said since the international switch-off date was June 17, there was no reason why ADN could not be given up to May 30 to set up free-to – air digital broadcasting on the 21 frequencies they have.

NATION REPORTER

An activist has accused the Supreme Court of failing to protect public rights in its determination of a dispute between media houses and the government over digital migration.

Mr Okiya Omtatah Wednesday said allowing the Communications Authority of Kenya to enforce the switch, and for the government to restore digital broadcast licence to the three media houses dealt only with broadcasting rights.

“The court only considered broadcasting rights of the media houses and went ahead to order that they be issued with a licence. It, however, did not consider the rights of TV viewers,” said Mr Omtatah.

He was responding to applications by the authority and the Attorney-General to strike out his petition seeking to compel them to restore free-to-air television broadcast.

According to the AG and the authority, the High Court has no jurisdiction to reopen the matter after it was dealt with by the Supreme Court.

“The issues being raised were covered by the Supreme Court and a lower court cannot issue any order to overrule or review that decision,” said Mr Wambua Kilonzo representing authority.

State Counsel Mwangi Njoroge said Mr Omtatah’s petition was not in good faith since his concerns were raised by the Consumer Federation of Kenya, which participated in the earlier case.

According to Mr Njoroge, the court should respect the mandate of the authority in setting the digital switch-off date without imposing a directive.

“A platform for digital distribution of TV broadcast exists and is available to broadcasters migrating from analogue to digital,” said Mr Njoroge.

TERMINATE FREE TO AIR

Mr Omtatah argued that the Supreme Court did not order the authority to terminate free-to-air television services and that by implementing the decision selectively, it violated the rights of a majority of Kenyans.

He said the authority was promoting a Chinese pay TV firm unfairly instead of allowing African Digital Network — a consortium of the top three media houses — to have time to roll out their digital platform.

“The commission has turned Kenya’s migration to digital TV broadcasting into a forced relocation of everybody from free-to-air TV to pay TV, while in most countries, digital TV broadcasting are used exclusively for free-to-air. Pay TV use satellites and cable to distribute their content,” he said.

The activist said since the international switch-off date was June 17, there was no reason why ADN could not be given up to May 30 to set up free-to – air digital broadcasting on the 21 frequencies they have.

Mr Omtatah said many Kenyans had a legitimate expectation that after the Supreme Court restored digital licences to three media houses, the migration from analogue TV broadcast would be handled in a manner that protected public interest.

The case was adjourned to March 2.