

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.1021 of 2004**

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<u>Date</u>	<u>Order with Signature of Judge</u>
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : M/s KAYF (Pvt.) Ltd.  
Through Mr. Abid Hussain, Advocate.

**Versus**

Defendant : Pakistan Television Corporation Ltd.  
through SurrIDGE & Bacheno Advocates and Solicitors.

Date of hearing : **05.05.2021**

Date of Decision : **05.07.2021**

**JUDGMENT**

**NAZAR AKBAR, J.** The Plaintiff has filed this suit on **06.09.2004** against the defendant for Recovery, Declaration and Permanent Injunction and sought following relief(s):-

- (a) That this Hon'ble Court may be pleased to declare that the agreement dated 19.07.2004, stands renewed/extended for a further period of twelve (12) months with effect from 18.07.2004.
- (b) That this Hon'ble Court may be pleased to declare that the letter of the defendant dated 30.08.2004 is of no legal effect and the agreement cannot be terminated unilaterally by the defendant.
- (c) That this Hon'ble Court may be pleased to restrain the defendant permanently from giving effect to their letter dated 30.08.2004.
- (d) That this Hon'ble Court may be pleased to pass a decree for a sum of Rs.15.21 million against the defendant being the legitimate compensation of the plaintiff, with a reasonable cost of funds from the date of institution of this suit.
- (e) That this Hon'ble Court may further be pleased to grant any other/consequential and better relief(s) in the circumstances of the case.

2. Brief facts of the case are that the plaintiff is a private limited company engaged in the business of marketing television rights to sponsors, while the defendant is a corporation. On 11.01.2003 by a written agreement between the plaintiff and the defendant, the plaintiff was awarded marketing rights of the defendant's morning transmission for the time and days mentioned in the said agreement for a price of Rs.20.8 million. The plaintiff complied with the terms of the agreement executed between the parties and therefore enjoyed its marketing rights till the expiry of the said agreement. Upon expiry of the said agreement, the parties entered into a fresh agreement dated 11.07.2003 to award the same marketing rights to the plaintiff for a period of 12 months for a sum of Rs.42.5 million. As per clause 8 of said agreement, its validity was uptill 18.07.2004 and the contract was extendable for a further period of one year subject to increase of 10% of the agreement value. It was further averred that on 17.05.2005 the defendant, through its Controller Programmes Administration, wrote a letter to the plaintiff and sought consent/acceptance for extension of the agreement dated 19.7.2003 subject to 10% increase in the price. Thereafter the defendant wrote another letter dated 03.6.2004 to the plaintiff offering the extension of the agreement subject to acceptance by the plaintiff. In reply thereof, the plaintiff given consent to the offer of the defendant for renewal of the agreement for a further period of one year and the plaintiff continued to market the agreed slot, even after 18.7.2004 and has been marketing as per agreed terms and conditions. In pursuance of the correspondence between the parties, the plaintiff also sent a fresh agreement to the defendant, duly signed by him for signing of the defendant. Subsequently, the defendant corporation suspended the 0900 promos and 0900 daily quiz programs, which were the right of the plaintiff as per the agreement and the plaintiff held various

meetings with the defendant in this regard and also wrote a letter dated 03.08.2004 detailing the problems faced by him, the defendant given assurances to the plaintiff regarding their genuine grievances and the plaintiff continued to market the rights as per agreement. It was further averred that on 21.08.2004 the plaintiff reminded the defendant to return one copy of the signed agreement and also to restore the suspended 0900 promos and 0900 quiz programmes as agreed. The plaintiff also wrote a letter to the defendant detailing the losses caused to him due to ad-hoc policies of the defendant, which were against the agreement entered into between the parties. The compensation claimed was against short/nil transmission for around 21 days for not running of the 0900 promos by the defendant for infringement/usage of the plaintiff's slot by the defendant and for Ramadan period compensation. The plaintiff claimed that the total amount claimed is Rs.15.21 million which the defendant is liable to pay to the plaintiff. On **30.08.2004** the plaintiff was shocked and surprised to receive a letter from the defendant, which communicated that the defendant had decided to market the Roshan Pakistan/Rising Pakistan slot through its own field force with effect from 10.09.2004. The plaintiff immediately responded to the said letter and sent its reply on 31.08.2004 in which the plaintiff stated that once the willingness of the plaintiff had been sought and they had communicated their acceptance to the extension of the agreement for a further period of one year, the agreement stood renewed and there was no provision of termination of the agreement by the defendant. Thereafter the defendant sent a letter dated **02.09.2004** to the plaintiff in which a contradictory view was taken by them. On one hand the defendant admitted that the offer was made to the plaintiff for extension of the agreement for a further period of one year and on the other hand they stated that the plaintiff did not give its consent/

acceptance to the said letter/offer. Therefore, the Plaintiff filed the instant suit against the defendant.

3. Notices of the instant suit were sent to the Defendant and they have filed written statement in which they have admitted that an agreement dated 11.07.2003 was entered into between the plaintiff and the defendant, however, the defendant contended that the extension of the agreement on terms and conditions was required to be made by the plaintiff within 15 days of the receipt of letter dated **17.05.2004**, failing which, as the letter clearly shows, the defendant would have the right to invite bids through public tender. The said letter was followed by another letter from the defendant dated **03.06.2004**, in which the plaintiff was once again asked to send its consent for extension of the agreement dated 11.07.2003 and since the initial time period of plaintiff's consent to the extension has passed, the letter dated 03.06.2004 also reserved the defendant's right to seek bids through press tender. The defendant further contended that if any marketing was carried by the plaintiff, as per own admission of the plaintiff in letter dated 21.08.2004, it was in good faith and not under any contractual obligation whatsoever. The plaintiff's failure to accept the defendant's offer for an extension of the agreement dated 11.07.2003, the previously existing arrangement between the plaintiff and the defendant had come to an end and the defendant had decided to market the relevant time slot through its own field force. The defendant lastly contended that no loss has been suffered by the plaintiff, therefore, no cause of action accrued to him to file the instant suit which is liable to be dismissed.

4. On **31.10.2005** from pleadings of the parties, followings issues were framed:-

1. Whether the plaintiff have no cause of action for their action in the suit?
2. Whether the suit is barred under sections 21, 42 and 56 of the Specific Relief Act 1877?
3. Whether the agreement dated 11.7.2003 for the marketing rights was extended after expiry of 18<sup>th</sup> July, 2004?
4. Whether the defendant have breached the agreement with the plaintiff? If so, its effect?
5. Whether the plaintiff through Kanwal Hameed waived their contractual rights by entering into an agreement dated 10.9.2004? If so, its effect?
6. Whether the agreement between Kanwal Hameed and defendant was binding on the plaintiff?
7. Whether the plaintiff are entitled to their claim of Rs.15.21 million against the defendant in the above suit?
8. Whether Kanwal Hameed was chairman of the plaintiff?
9. Whether the plaintiff have suffered any loss during their contractual period with the defendant? If so, then to what amount?
10. Whether the defendant have dis-obeyed the order dated 8.9.2004? If so, its effect?
11. To what relief the plaintiff are entitled?
12. What should the order be?

5. The plaintiff examined three witnesses in support of his claim i.e PW-1 Mian Farasat Maqsood, Director of the plaintiff company; PW-2 Jalal A. Ansari, Chief Executive/Managing Director of M/s. Jaf Com. (Pvt.) Limited and PW-03 Muhammad Banaras Khan, Ex-Director Marketing PTVC Ltd. All the three PWs were cross-examined by the learned counsel for the defendant. The defendant examined one Nazir Hussain Shahzad, Senior Accounts Officer, Programme Division, PTVC Ltd. He was also cross-examined by learned counsel for the plaintiff.

6. I have heard learned counsel for the plaintiff and allowed the parties to file written arguments, too, if they want within one week.

Mr. Abid Hussain, Advocate for the plaintiff and Dr. Adeel Abid, Advocate for defendant have filed written synopsis. I have also perused the record. My findings with reasons on the issues are as follows:-

**ISSUE NO.1 & 2**

7. This is a suit for declaration and permanent injunction and by order dated **14.03.2005** this Court has already dismissed plaintiff's application under Order XXXIX Rule 1 & 2 (CMA No.6164/2004). The plaintiff against the dismissal of said application has not preferred any appeal, therefore, may be for this reason both the parties have not pressed these two issues.

**ISSUE NO.3 & 4**

8. These issues are interconnected, therefore, same are decided together. The burden of these issues was on the plaintiff to show that how an agreement dated **11.7.2003** (Ex:PW-1/3) after expiry on **18.7.2004** was extended. The plaintiff has examined Mian Farasat Maqsood and he has filed an affidavit-in-evidence. The plaintiff has admitted that two agreements dated **11.01.2003** and **11.7.2003** were executed by Mrs. Kanwal Hameed as Executive Director of the plaintiff. The relation between the plaintiff and the defendant is based on these two agreements. The plaintiff claimed that the agreement dated 11.7.2003 has been extended by virtue of letter dated **04.6.2004** (Ex:P/7) whereby consent was accorded by the defendant for its extension. To appreciate that whether the agreement was extended by letter dated 04.06.2004 (Ex:PW-1/7) we have to examine its contents and background. The plaintiff's letter dated **04.06.2004** was in response to a reminder letter dated **03.06.2004** (Ex:PW-1/6) from the defendant that their earlier letter dated **17.05.2004** (Ex:PW-1/5) has not been replied by the plaintiff. In the letter dated

**17.05.2004** the defendant has offered renewal of agreement on **three conditions** with time limit of 15 days for tis consent. It is reproduced below:-

Subject: AGREEMENT FOR AWARD OF MARKETING RIGHT OF DMT SLOT "ROSHAN PAKISTAN".

Reference is made agreement for award of marketing rights of DMT slot "ROSHAN PAKISTAN".

The marketing rights were awarded for a period of one year w.e.f. 19<sup>th</sup> July, 2003 which will be expired on 18<sup>th</sup> July, 2004. The agreement is extendable for a further period of one year subject to increase of 10% of current agreement value.

**You are requested to please submit your consent for extension of agreement on the following terms and conditions:-**

- Operation of 0900 telephone will be considered either as commercial.
- PTV's policy for operation of 0900 telephone service will be strictly followed.
- The period of agreement will be one year and shall not be extended further.

Your consent for extension of the agreement on the above terms and conditions is requested within 15 days from the receipt of this letter. In either case, PTV shall have right to invite the bids through press tender.

(Khalid Mahmood Zaidi)  
Controller  
Programmes Administration

The time given in the aforesaid letter was 15 days for the acceptance of the offer. However, since it was not responded the defendant sent reminder to the plaintiff with the observation that the consent for extension of the agreement with terms and conditions offered through their letter dated **17.05.2004** may be communicated latest by **05.6.2004**. This reminder (Ex:PW-1/6) was replied by the plaintiff through letter dated **04.6.2004** (Ex:PW-1/7). The contents of plaintiff's letter are reproduced below:-

Subject: Renewal of Agreement of Roshan Pakistan for further One year, Reference your letter No.HQ-P-DMT/1467 dated: 03.06.04.

Dear Sir,

Reference to the subject mentioned above, we would like to mention that we have been successfully marketing 7:00 to 9:10

a.m. morning transmission "Roshan Pakistan" on PTV network since January 16, 2003 and have generated more than double revenue then (than) PTV's, previous revenues.

Furthermore, we would like to inform you that we are ready to market this slot for next one year i.e. 19.07.2004 to 18.07.2005, as per our agreement with PTV.

We also look forward to your kind cooperation in marketing of this slot.

Thanking you and assuring you our best cooperation always.

Best regards.  
For KAYF (Pvt.) Ltd.

Mian Farasat Maqsood  
Managing Director.

Cc: D.M. PTV Karachi

9. The perusal of Ex:PW-1/7 clearly suggests that none of the three conditions mentioned in the letter dated **17.5.2004** (Ex:PW-1/5) for renewal of agreement has been accepted by the defendant. The agreement has admittedly expired in July, 2004 and for its renewal new terms have been offered by the defendant in terms of **clause 9** of the agreement sought to be renewed. The plaintiff knew that agreement has not been renewed and therefore, plaintiff themselves through letter dated **21.08.2004** (Ex:PW-1/8) categorically admitted that:-

"Furthermore, our agreement for further one year has not yet been signed for which we already confirmed by a letter on 04.06.04 to Controller Programmes under the same terms & conditions of the agreement (10% increase in amount), in reply of his letter the term No.8(ii) of the agreement. We wrote, for the same to you before also and sent the New Original Agreement containing three sheets for next One year to sign it but no response has been received yet from your side."

10. The above correspondence clearly suggests that the agreement dated 11.07.2003 on expiry on 18.7.2004 has not been mutually renewed. The defendant has categorically expressed three terms and conditions for renewal of the agreement which has not been accepted by the defendant. Had their letter dated 04.06.2004 (Ex:PW-1/7) was enough to be considered as conclusive extension of agreement then



what was the need to send another letter dated 21.08.2004 (Ex:PW-1/8) to the defendant with new original agreement for next one year. Renewal of the agreement was not an automatic renewal. In fact the plaintiff has failed to persuade the defendant to change the offer of renewal which was subject to the conditions mentioned in the letter dated **17.05.2004** (Ex:PW-1/5). The plaintiff altogether has ignored the terms for renewal extended by the defendant and refused to sign the draft agreement sent by the plaintiff.

11. In view of the above evidence, issue No.3 and 4 are answered in negative.

**ISSUE NO.5, 6 & 8**

12. The burden of proof of these issues was on the plaintiff. This is an admitted position from the record that relationship between the plaintiff and defendant has begun with the first ever agreement between the parties dated 11.01.2003 (Ex:PW-1/3) which was signed and executed by Mrs. Kanwal Hameed on behalf of the plaintiff. It was only for six months and for its extension a fax message was sent by the plaintiff on **14.07.2003** (Ex: PW-1/14) through Mian Farasat Maqsood as their Managing Director. In response to that fax message, the defendant's Director Programmes has offered extension of the six months agreement into one year agreement with increased amount of value. Even the said letter (Ex: PW-1/14) was marked by Mian Farasat Maqsood, M.D of the plaintiff company to Mrs. Kanwal Hameed for her approval and she has endorsed it on **15.07.2003**. It was followed by an agreement effective for the period from **19<sup>th</sup> July, 2003** to **18<sup>th</sup> July, 2004** executed by Mrs. Kanwal Hameed as Executive Director. The Managing Director Mr. Farasat Maqsood was only a liaison. The last effort of Mr. Farasat Maqsood, Managing

Director of plaintiff through letter dated **31.08.2004** (Ex:PW-1/11) to get the agreement renewed without accepting the terms offered by the defendant on **17.05.2004** on the threat to the defendant that legal proceedings shall be initiated was also frustrated when the defendant by letter dated **02.09.2004** (Ex:PW-1/12) advised the plaintiff “not to pursue any other steps” and the defendant will defend court proceedings. It was after the last mentioned letter from the defendant when Mrs. Kanwal Hameed directly intervened and after meeting through letter dated **04.09.2004** (Ex:DW-1/3) in the capacity of Chairperson of defendant settled the issue. Her letter dated 04.03.2004 was followed by letter dated **10.09.2004** (DW-1/4) from the defendant with a request to the Chairperson to sign it as a token acceptance which she did and communicated it to the defendant. The plaintiff in their evidence has not disputed that Mrs. Kanwal Hameed was not authorized or competent to execute the said agreements on behalf of the plaintiff company. The plaintiff by any subsequent letter has not withdrawn the consent sent by their Chairperson who has been signatory of the basic document which created contractual relationship between the plaintiff and the defendant. If at all, this letter was not supposed to be binding on the plaintiff company, then it was not the duty of the defendant to have taken an action against Chairperson/Executive Director of the plaintiff for foregoing the claim of extension of agreement dated 11.07.2003, the first term of the agreement dated 10.09.2004. This document has been placed on record by the defendant along with their counter affidavit and while dismissing the application under Order XXXIX Rule 1 and 2 CPC this Court has categorically discussed it (Ex:DW-1/3 and 1/4) as follows:-

“The letter/agreement was signed by Kanwal Hameed on behalf of the plaintiff company as Chairman and by the Managing Director of the defendant corporation. **No rejoinder in rebuttal of the defendant’s above**

**allegation has been field on behalf of the plaintiff. Neither has it been denied that Kanwal Hameed, the signatory to the aforesaid two letters, being annexure 'A' and 'A-1' to the counter affidavit, is chairman of the plaintiff company. Nor was it claimed that she was not authorized by the directors of the plaintiff company to forego the plaintiff's right, as required by clause (m)(iii) of sub-section (2) of Section 196 of the Companies Ordinance 1984. Furthermore article 74 of the Article of Association of the plaintiff company provides for election of one of their members as the Chairman of the Board and for vesting in him (her) such powers and function as they may deem fit.** It is also crucial to note that the agreements dated 11.1.2002 and 11.7.2003 (annexure 'B' and 'C' to the plaint) also were signed by the said Kanwal Hameed, as Executive Director of the plaintiff and it is the second of the above two agreements that the plaintiff is seeking extension of. It is now well laid down principle that where an Article of Association of a company provides for delegation of powers by the directors to the Managing Director or for that matter the chairman, a person dealing with such a delegatee may assume that he (she) has the power to do what the purports to do, provided that it is within the ordinary duties of the Managing Director or the Chairman, and any commitment so made by the Managing Director or the Chairman is binding on the company."

The above findings have not been even challenged by the plaintiff in any appeal. Even in the evidence subsequent to the passing of the above order nothing has been produced as evidence to claim that the plaintiff by any subsequent action has nullified the effect of the agreement dated 10.09.2004.

13. In view of the above, issues No.5, 6 and 8 are answered in affirmative.

#### **ISSUE NO.7 & 9**

14. In view of my findings on issue No.1 to 6 when there was no contractual obligation between the plaintiff and the defendant, the plaintiff is not entitled to compensation particularly the claim of Rs.15.21 million against the defendant. In this context it may be mentioned here that this amount is claimed as legitimate compensation for the plaintiff. The legitimacy, if any, could be subject

to certain legitimate relation between the parties and as discussed above there was no contractual obligation. This is irrespective of the fact that admittedly by agreement dated 10.09.2004 the Chairperson of plaintiff has already forgone claim of extension of agreement and assured that no action or claim thereunder be initiated and if it has been initiated, it shall be withdrawn, therefore, the question of compensation does not arise.

15. In view of the above, issue No.7 and 9 are answered in negative.

**ISSUE NO.10**

16. In view of the findings on issue No.1 to 9 when it is held that there was not contractual obligation between the parties, the question of disobedience of order dated 08.09.2004 does not arise since it was an exparte order and recalled on **14.03.2005**. And in between time was always sought by the counsel for the plaintiff. However, even if it arises, it cannot be the basis of decreeing the suit and the plaintiff should have filed contempt proceedings for disobedience of the Court's order, therefore, this issue was in fact out of context and need not to be answered.

**ISSUE NO.11 & 12**

17. In view of above discussion, the plaintiff is not entitled for any relief and therefore, the instant suit is dismissed.

JUDGE

Karachi,  
Dated: 05.07.2021

Ayaz Gul