



L E S O T H O  
C O M M U N I C A T I O N S  
A U T H O R I T Y

30 October 2020

**STATEMENT ON IMPACT OF THE URGENT COURT ORDER OBTAINED UNLAWFULLY BY VODACOM LESOTHO (PTY) LTD AGAINST LESOTHO COMMUNICATIONS AUTHORITY ON 9 OCTOBER 2020 AND POSTPONEMENT OF THE RETURN DATE FROM 23 OCTOBER 2020 TO 17 NOVEMBER 2020**

LCA Counsel filed Notice of Intention to Oppose at the Registry of the High Court and served Counsel for Vodacom Lesotho as far back as 12 October 2020.

As at close of business on 22 October 2020, the Court File still did not have any documents in it. It is not clear where copies of the Application were and the Court File had not been handed over to the Judge by close of business on 22 October 2020.

As far back as 15 October 2020, LCA Counsel sent correspondence to Vodacom Lesotho Counsel noting that Vodacom Lesotho had referred to Annexures in its founding affidavit that had not been included in the record that led to the irregular unilateral grant of the Interim Court Order by a Court that in our view lacks jurisdiction to hear commercial matters.

LCA Counsel requested Vodacom Lesotho Counsel to provide the annexures to enable LCA to respond, since the documents were used to obtain the Interim Court Order. The letter was received by Vodacom Lesotho Counsel on 15 October 2020, but as at 22 October 2020, Vodacom Lesotho Counsel had not provided the documents to LCA Counsel ahead of the Hearing on 23 October 2020. On 22 October 2020 when contacted telephonically by LCA Counsel, Vodacom Lesotho

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Counsel undertook to send the documents to LCA Counsel by e-mail once Vodacom Lesotho had sent them but he had still not sent them by morning of 23 October 2020. The incomplete documents were received on 27 October 2020.

Once LCA Counsel had filed the notice of intention to oppose on 12 October 2020 LCA Counsel attended at Court to arrange for the matter to be allocated a Judge, a responsibility that lies with Counsel for Vodacom Lesotho as Applicant but Vodacom Lesotho Counsel failed to do. It was then moved from Justice Nomncongo and allocated to Justice Moahloli.

On 23 October 2020 LCA attended with LCA Counsel to find the situation unchanged. There were still no documents in the Court File and it is the duty of Vodacom Lesotho Counsel as Applicant to ensure that. There was no return of service by the Deputy Sheriff in the Court File because he had not been paid his fees for service by Vodacom Lesotho Counsel.

Vodacom Lesotho Counsel arrived late to find the Court File empty. The Honourable Judge arrived around 10:30 and met with both Counsels in his Chambers, where it was agreed that the matter could not proceed because the Judge did not have the Court File by close of business on 22 October 2020 to acquaint himself with its content. Vodacom Lesotho Counsel only provided a copy of the Application in the Court File that morning in the Judge's Chambers.

It was agreed that LCA would have until Wednesday 28 October 2020 to deliver the Record of Proceedings. Thereafter, Vodacom Lesotho would have the chance to amend its notice of motion and file its supplementary affidavit by 3 November 2020. LCA would then file its opposing affidavit by 10 November 2020 and Vodacom Lesotho would file its reply by 16 November 2020. Vodacom Lesotho would file its heads of argument by 20 November 2020 and LCA would file its heads of argument by 25 November 2020. The matter was set down for hearing before Justice Moahloli on 27 November 2020.

LCA consent to the above process does not bar LCA from raising the objections that it would have raised on 23 October 2020. This is the account of events as they transpired on 23 October 2020.

The impact of the Court Order is that LCA cannot adjudicate any and all alleged contraventions by Vodacom Lesotho until the matter has been finalised.

LCA is aware of widespread complaints from consumers on social media regarding unilateral depletion of their airtime balances by Vodacom Lesotho without explanation or reimbursement, which arose before and after 9 October 2020 when the Court Order was issued.

LCA is empowered in terms of its statutory mandate to protect consumers. However, in the light of the Court Order and while it persists, LCA is barred from intervening or making any decisions pertaining to Vodacom Lesotho until the matter is finalised.

LCA apologises to Basotho for the unfortunate impasse, which renders LCA impotent against Vodacom Lesotho and undertakes to continue to fulfil its mandate once the Court has lifted the unlawfully obtained Court Order to enable LCA to take appropriate enforcement action to protect consumers.

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LCA is an independent statutory body established in 2000 in terms of the Communications Act, 2012 to regulate the communications sector in Lesotho.

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