

Pay-TV firms required to also air free channels

By **KAMAU MUTHONI** | May 26th 2020 at 12:00:00 GMT +0300



Justice Mumbi Ngugi.

BUSINESS NEWS

Firms blocked all free broadcast channels after move to digital

Pay television service providers will no longer lock out competitors from using their set-top boxes to broadcast content to consumers.

In a judgment that throws the subscription-based TV companies into a tailspin, Court of Appeal judges threw out an appeal filed by MultiChoice Limited challenging High Court Judge Mumbi Ngugi's judgment on the sale of locked set-top boxes.

In a court battle that pitted MultiChoice, Wananchi Group Kenya Limited, Kenya Broadcasting Corporation (KBC), and the Communication Authority (CA), Justice Ngugi directed that all set-top boxes be open and operable between networks.

Aggrieved, MultiChoice moved to the Appellate Court and lodged a complaint that the judge had erred by addressing the set-top boxes issue while it was not the case before her.

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In the case that was heard by justices William Ouko, Asike Makhandia, Patrick Kiage, Gatembu Kairu and Fatuma Sichale, the company argued that Justice Ngugi ought to have restricted herself to the licensing of signal distribution.

The five-judge bench, however, found that MultiChoice failed to provide sufficient evidence to warrant overturning of the High Court judgment.

"Therefore, on a full consideration of the material on record and arguments before us, I have concluded that no grounds have been presented to us to warrant interference with the learned judge's exercise of discretion," ruled Justice Ouko.

He continued: "I adopt those views as they mirror what happened in the appeal before us, where the judge arrived at her determination based on the law and evidence before her. If in the appellant's opinion the conclusions were erroneous, it could only appeal."

Monthly subscription

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MultiChoice offers different programmes through its DStv and GoTV set-top boxes that are only available to subscribers who pay a monthly fee. When the subscription lapses, its customers are blocked from accessing both its programmes and free-to-air content provided by other broadcasters.

Wananchi also offers a similar service through its Zuku set-top boxes.

The genesis of the case can be traced back to the migration from analogue to digital broadcasting when the CA's predecessor, the Communications Commission of Kenya (CCK), designated KBC to set up a private company that would manage signal distribution services to avoid conflict of interest.

This led to the creation of a subsidiary, Signet Limited.

It was not long before a dispute broke out on how the CCK was treating MultiChoice and other players.

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Wananchi Group told Justice Ngugi that CCK was giving its competitor preferential access to the broadcasting distribution system provided by KBC.

The firm argued that CCK and KBC were permitting MultiChoice to sell locked set-top boxes that restricted content to the GoTV platform.

According to Wananchi, the State agencies were in breach of their statutory duty because they were giving a commercial advantage to MultiChoice while denying them the same opportunity.

Wananchi also urged the court to restrain Signet from providing signal distribution services as it was not registered.

Justice Ngugi found that KBC was breaching the public's right to receive information and the digital broadcasting policy guidelines in its partial dealings with MultiChoice.

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She ruled that although KBC had not renewed its one-year license, it did not breach Wananchi Group's rights, but was instead a dereliction of duty by the CCK.

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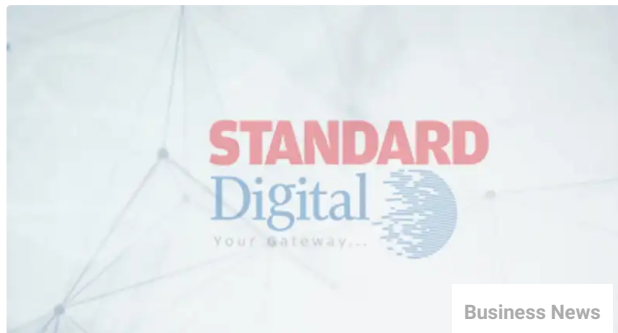
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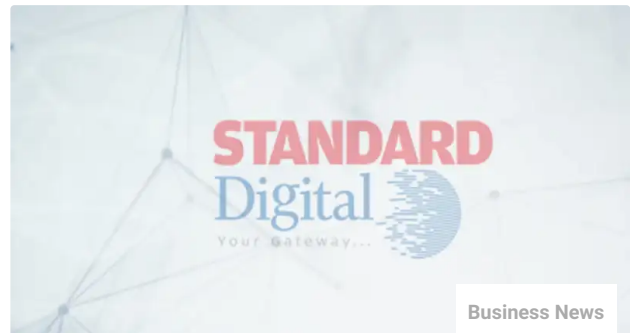


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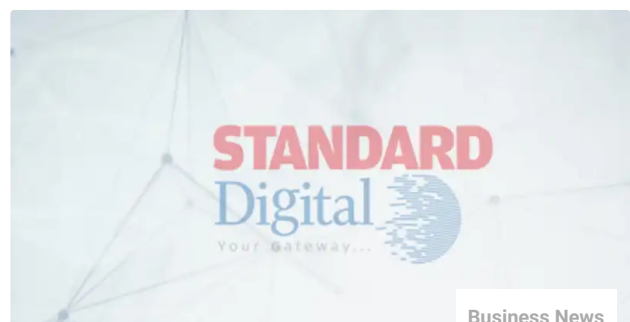
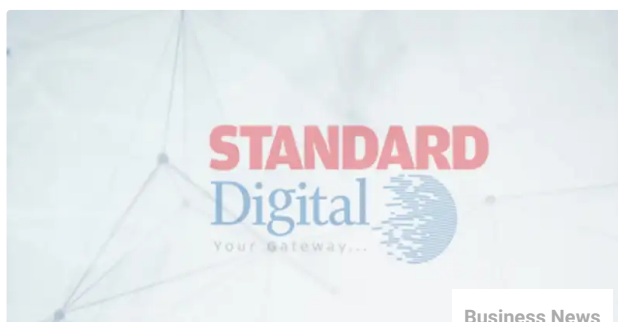
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