

Expensive, Draining, Hopeless and Never ending Court case between Mr. Nkosana Makate and the Cellular giant Vodacom

“The Please Call Me Idea”

Background to the whole saga

Former Vodacom employee, Nkosana Makate, (“Makete”) and the mobile network service have been in a court battle over the invention of the “Please Call Me” function for more than 10 years. While working as a 24-year-old junior accountant at the company in 2000, Makate approached his supervisor with the *idea of creating a service* that would allow users to contact people without using airtime. Please Call Me is a tool used by most South African mobile service providers that allows consumers to send a fixed text free of charge. Vodacom loved the idea and Makate was promised his share of the fortune when the service kicked off in 2001. An initial development plan for Please Call Me in 2001 said Vodacom could make US\$23m a day from the service. The legal battle began when Makate took the matter to the high court in 2008 after writing letters to Vodacom in 2007.

Here's a timeline of the battle between the network giant and Makate:

The matter was heard in the South Gauteng High Court in 2013

Makate filed a civil case against Vodacom at the South Gauteng High Court to sue for compensation for the Please Call Me concept. According to court proceedings, the Please Call Me idea was submitted by Makate's then boss Phillip Geissler, who told Makate in an oral agreement that he would negotiate remuneration with the company. Initially Vodacom denied Makate's claims that he had invented Please Call Me and that the company had promised to compensate him.

Case dismissal

In July 2014, the High Court dismissed Makate's lawsuit with costs and his appeal was denied by the South Gauteng High Court in December. Makate vowed that this was not the end of the battle as he intended to take the case to the Supreme Court of Appeal and the Constitutional Court, with his lawyers seeking R650m in damages.

Makate heads to the Constitutional Court

In April 2015, Makate filed papers with the court in a bid to get Vodacom to pay him his share of the Please Call Me profits. This happened after the Supreme Court of Appeal had rejected his leave for appeal on the grounds that he had "no reasonable prospects of success".

Constitutional Court rules in favour of Makate

In April 2016, the Constitutional Court ruled that Vodacom was bound to an agreement that Makate had with the company's former director of product development Phillip Geissler. The court ordered Vodacom to begin negotiations with Makate for a reasonable payout to compensate him. Makate initially demanded 15% of the Please Call Me proceeds.

The scramble for Please Call Me billions

In June 2016, Makate faced another battle from funders who claimed to have paid his legal fees during the case against Vodacom. Christiaan Schoeman and his company Raining Men planned to sue Makate for the money they had spent. In an affidavit submitted to the court, Makate said Schoeman had only paid R2.4m of his legal fees. Makate said he cancelled his agreement with Schoeman in January 2015 and received no further funding from Schoeman. Raining Men filed an urgent application to interdict and restrain Makate's lawyers from representing him in the negotiations with Vodacom.

Makate heads to Constitutional Court again after negotiations hit deadlock

The former employee filed an application with the court in November 2016 to get Vodacom to compensate him after the negotiations hit a deadlock in September. Makate said that the parties disagreed on the interpretation of the court order issued by the Constitutional Court in April.

Vodacom files an affidavit

The company filed an affidavit in January 2017, stating that it did not have enough records to determine how much Makate should be paid. Vodacom made this argument in court papers that sought to toss out the former employee's Constitutional Court application. In February 2017 Makate's Constitutional Court application was dismissed and Vodacom vowed to resume negotiations.

Makate files complaint for reckless management and misrepresentation of finances

In early 2018, he filed complaints with the Independent Regulatory Board of Auditors and the Companies and Intellectual Properties Commission against Vodacom and its auditors, PwC, for reckless management and misrepresentation of financial statements. This was after Vodacom offered Makate R10m in compensation.

Makate denies claims that he has reached a settlement with Vodacom

On January 12, Makate denied an announcement by the company that a settlement had been reached in the long-standing legal battle. Vodacom said it was paying "reasonable compensation" to Makete and that the matter was "finally settled and closed". Makate said Vodacom's claims were untrue and that he found the CEO's offer "shocking and an insult".

'Please call me' service started at MTN - Ari Kahn

While the battle over compensation for "Please Call Me" inventor Nkosana Makate spilled over at Vodacom headquarters on Thursday, a former MTN consultant shed light on the back story to the cellphone service. **Ari Kahn**, speaking on the talk radio 702 Breakfast show hosted by Bongani Bingwa, said the idea was not something new and originally belonged to **MTN**. "It is not something new, to be fair. Vodacom has been telling me this for the past 10 years privately and I think they have come to a conscious point where they are saying they need to acknowledge the truth and the truth is what they are stating," Khan said, speaking from California in the US.

Khan came forward as the real "Please Call Me" inventor as far back as 2013. He told Fin24 at the time that Vodacom had only profited because MTN chose not to enforce its Intellectual Property Rights (IPR) from the patent it was granted. He said that MTN had already sent hundreds of millions of "Please Call Me" messages over its public network before Vodacom launched their idea. Kahn told 702 that 10 million MTN users had already used the same system that Vodacom had deployed. "The simple fact is what Nkosana Makate suggested to Vodacom, they never even developed or deployed. His buzz memo was not deployed back in 2001 and has not been deployed in the 18 years that have followed ... and what Vodacom actually developed, belonged to MTN," said Kahn.

"The simple story is, what he suggested led Vodacom directly to MTN's front door. They developed a product and the technology that was planned and owned by MTN." Makate is expected to drag Vodacom back to court in a bid to fight the compensation offer made for the "Please Call Me" idea. The Sowetan that Makate has rejected an offer determined by Vodacom's CEO Shameel Joosub to compensate him for the idea. He said his legal team has already drafted court papers to have Joosub's determination reviewed. "It is ridiculous and it is flawed, so on that basis we are going to review it," he told the paper. Makate and the cellphone giant have been embroiled in lengthy settlement negotiations. Earlier in January, Vodacom said they considered the matter settled and closed.

Makate however felt that the compensation offer was "ridiculous and insulting". The former Vodacom employee claims he came up with the "Please Call Me" idea in 2000. Vodacom's head of legal and regulatory affairs Nkateko Nyoka also admitted in an opinion that MTN launched its idea a month before Vodacom. "Firstly, 'Please Call Me' was an idea, but not an original one. Secondly, Mr Makate's idea was just that: a bare idea, which still had to be assessed for commercial viability and technical feasibility. Neither did Mr Makate provide any capital outlay nor assume any risk, as any entrepreneur would do in the circumstances," said Nyoka. Kahn mentioned that, "no one said that anyone has stolen anything. What happened is that all the players behaved very poorly and badly on this entire story and Vodacom included. They developed a world-class technology through my invention and they launched services that changed the landscape," he said.

Kahn said he was not paid by MTN for his product.

Vodacom admits MTN invented the Please Call Me

Vodacom has admitted that Please Call Me was invented and subsequently patented by MTN before Nkosana Kenneth Makate came up with the idea. This is according to Nkateko Nyoka, chief officer of legal and regulatory affairs at Vodacom, who added that MTN launched its version, called Call Me, a month before Vodacom did. The statements were made in an opinion column by Nyoka to shed light on the **ongoing battle** between Vodacom and Makate. **Vodacom said**, as per a Constitutional Court order, its CEO has determined the amount of reasonable compensation payable to Makate for his involvement in the launch of the Please Call Me and considers the matter as settled and closed.

Nyoka said Vodacom is waiting to pay Makate “a significant amount”.

The true Please Call Me inventor

The true inventor of the Please Call Me service is Ari Kahn, who consulted for MTN and created the “Call Me” technology in 2000. The SA Patent office granted the Call Me patent to Kahn and MTN, and recognised Kahn as the inventor on 22 January 2001.

Kahn provided MyBroadband with a timeline of events that led to the Call Me product.

- On 20 November 2000 Makate shares his idea with Vodacom and requests payment.
- Vodacom says “let us develop and use the idea” and if it proves technically feasible and commercially successful “we will reward you”.
- A week earlier on 15 November 2000, Kahn had already conceived the idea and briefed patent attorneys on 16 November to prepare a patent application for filing.
- Not only did Kahn conceive the idea first, he reduced it to practice first and sought IP protection first – filing a patent disclosing all the steps and methods required to deliver a working solution.
- MTN filed for IP protection first and it launched the service first on 23 January 2001 – seven weeks before Vodacom.
- The MTN service worked, and millions of users sent “Call me” messages over the MTN network during the first few weeks – which establishes prior art as Vodacom had yet to publicly disclose and launch their service.
- Vodacom launches a similar service on 15 March 2001. The service is a carbon copy of the MTN service and is even identically named “Call me” – it was later changed to “Please Call Me”.
- MTN immediately notifies Vodacom that they are infringing on their patent.
- Vodacom informs Makate that MTN already have the service and are threatening legal action for infringement.

Makate should not get a cent – Kahn

As the Please Call Me inventor, Kahn believes Makate should not get a cent from Vodacom for his “invention”. Kahn said Makate was not the originator of the Please Call Me, adding that the courts never once ruled he invented the service. “You cannot invent an idea, which is all he proposed,” said Kahn. He added that Vodacom did not benefit one iota from Makate’s contribution, but rather from MTN choosing not to enforce its rights at the time. “The entire case has been portrayed as ‘the little guy denied his due by the big bully network’ to garner sympathy and obfuscate the fact that he did not actually invent the service,” Kahn said.

Makate not happy with the amount

Regardless of this, Makate has said he did not agree to a compensation payout from Vodacom – following the company saying the matter is closed. Vodacom explained that the Constitutional Court ordered the company to pay Makate an amount determined by its CEO and does not require Makate to agree to the amount. This caused a backlash from politicians and a lobby group, which want to see the company reach a mutually-agreed settlement with Makate. Communications minister Stella Ndabeni-Abrahams told Vodacom to “just shut up” and to talk to Makate about the matter.

Gauteng Education MEC Panyaza Lesufi said on Twitter that people must stand by “Nkosana ‘Please Call Me’ Makate” against “this bully called Vodacom”. Lesufi added Makate must be protected from Vodacom and that the company must pay him by 31 January 2019 or face the wrath of the nation.

Vodacom shutdown threatened

The Please Call Me Movement, headed by Modise Sekgothe, also threatend to shut down Vodacom on 31 January if a settlement was not reached. The movement, which claimed to be against corporate bullying and consumer injustice, said Vodacom owes Makate R70 billion for his idea.

“Join us as we will be shutting down Vodaworld in pursuit of justice for Nkosana Makate,” a flyer read.

Who really invented ‘please call me’?

The protracted “please call me” saga is in the news again. At the centre of the saga is the latest breakdown in negotiations between Vodacom and its former employee Nkosana Makate over monetary compensation for the idea behind the service, which allows customers without airtime to send a text message asking the recipient to call them. The story is well documented. The constitutional court in 2016 found in favour of Makate as the inventor of “please call me”, and Vodacom had to enter into in good-faith negotiations with him to determine a reasonable settlement figure. The top court overturned judgments of lower courts. It is worth looking back at court records (in the public domain) about the brainchild of ‘please call me’

The saga has also sparked a fierce debate about whether Makate or Vodacom's rival MTN is the true inventor of the "please call me" service. This debate was sparked when Ari Kahn, a former MTN contractor, said in a radio interview that Makate doesn't have rights to the service — and is thus not deserving of compensation.

Kahn said he filed a patent on a "please call me"-type innovation on behalf of MTN, beating Makate in claiming the rights to the service when Vodacom launched it in March 2001. Arguably, the debate about the true inventor doesn't take into consideration that there are two different "please call me"-type services that were launched by two competing telecommunications giants.

Considering this, it is worth looking back at court records (in the public domain) about the brainchild of "please call me".

'Vastly different'

When Makate's battle with Vodacom started in 2005 at the high court in Johannesburg, it was not disputed by either party that MTN was the first to provide a "please call me"-type service. It was also accepted by Judge Philip Coppin in his 2014 judgment that the innovations launched by MTN and Vodacom were vastly different. During the trial, Makate called an American computer science and telecommunications expert, Ivan Zatkovich, as a witness to testify about the differences between Vodacom and MTN's offerings.

MTN's patent, according to Zatkovich, was based on an interactive voice response (IVR) system.

Vodacom didn't challenge a submission that Makate's 'please call me' service was 'a novel and patentable idea' Elaborating on the mechanics of an IVR system, Zatkovich said: "An example of this was the automated voice menu presented to you when calling an institution, such as a bank or insurance company to query something. A voice would come on saying, 'Press one to check your account balance' or 'Press two to talk to customer services'. "In practice, an MTN subscriber would call an IVR system, proceed to enter a key code and then enter the recipient's phone number in order to initiate a "please call me" message.

Meanwhile, Vodacom's "please call me" was based on a messaging system known as unstructured supplementary service data (USSD). Said Zatkovich: "A USSD message, which includes Party A and Party B's phone numbers, gets sent from the cellular phone of Party A (the person with no airtime) to the internal USSD server (infrastructure of a telecoms company). (The server) then extracts Party A's and Party B's phone numbers, composes a message in the form of an actual text message, which reads 'Please call Party A's phone number' (and gives the number)."

The court also accepted Zatkovich's testimony that the business model of the MTN and Vodacom system was different: Vodacom targeted customers with a prepaid cellphone but no airtime, while MTN "gave no indication of what market it was directed at". Vodacom didn't challenge Zatkovich's submission that Makate's "please call me" service was "a novel and patentable idea". It only led the evidence of former group CEO Alan Knott-Craig, who was found to have lied about inventing the service.

Curiously, MTN never applied to intervene in the court case, although its patent was prominently pitted against that of Vodacom. In the early 2000s, MTN and Vodacom were key players in South Africa's telecoms industry and were competitive in defending their respective market shares. In court, it appeared that MTN left it to Kahn to narrate his "please call me" patent. But outside the court, MTN issued Vodacom with a cease and desist on infringing its intellectual property — but never forged ahead with the matter.

Conclusion

Initially Vodacom denied Makate's claims that he had invented Please Call Me and that the company had promised to compensate him. In particular, the problem here signifies the challenges are found on oral contracts. Kunokhar CTP is here to solve this dilemma because not all South Africans with brilliant ideas but with no financial strength might be as lucky as Makete to finance all the proceedings of fighting for his idea. The challenge above all here is proof of ownership. This was an idea and could not be registered with CIPC because CIPC does not register ideas but CIPC registers other things other than an idea. Should CIPC was able to register an idea, this battle would be over by now. The time line above is taken from the local sources to illustrate how difficult and disadvantaging it is to have someone claiming your idea. At Kunokhar CTP we close this gap by registering ideas for the South Africans and we are the only company that is able to do so. We believe that this product will put a stop in similar problems as the one mentioned above, because it will be a matter of proving that the idea has been registered at some date, registered from an external source who is able to verify that registration belongs to someone (thereby proving ownership), anyone who claims it must prove his ownership against it. Kunokhar CTP undertakes to solve this problem. Our certificate, like any other certificate is a proof that something was done, the idea was registered with us by a certain person mentioned on the certificate itself. We merely prove registration and ownership. Although we have sufficient expertise in our firm, we do our best with the information we obtain from the registrant to estimate the value of the idea so that there are few questions of how much that needs to be paid to the complainant once a similar dispute has erupted.